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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 26 April 1993

# Journal des débats (Hansard)

Lundi 26 avril 1993

Standing committee on  
administration of justice

Comité permanent de  
l'administration de la justice

Organization

Organisation



Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman





### **Table of Contents**

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# LEGISLATIVE ASSEMBLY OF ONTARIO

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Monday 26 April 1993**

The committee met at 1533 in room 228.

### ELECTION OF CHAIR

**Clerk of the Committee (Ms Lisa Freedman):** Honourable members, it's my duty to call upon you to elect a Chair. Are there any nominations?

**Ms Zanana L. Akande (St Andrew-St Patrick):** I nominate Rosario Marchese for Chair.

**Mr David Tilson (Dufferin-Peel):** Could you say that louder?

**Mr Noel Duignan (Halton North):** Why?

**Clerk of the Committee:** Are there any further nominations? I declare the nominations closed and Mr Marchese elected as Chair of the committee.

**The Chair (Mr Rosario Marchese):** Thank you.

**Mr Duignan:** Why not let this be short?

**The Chair:** No jokes on shortness, all right?

**Mr Duignan:** Remo's not here any more.

### ELECTION OF VICE-CHAIR

**The Chair:** Do I have nominations for the election of Vice-Chair?

**Mr Gary Malkowski (York East):** I nominate Margaret Harrington.

**The Chair:** Then done. Any other nominations? All those in favour? Any opposed? Even David supports it. Margaret's the Vice-Chair.

### BUSINESS SUBCOMMITTEE

**The Chair:** Okay, formation of the subcommittee.

**Mr Tilson:** I would move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof to consider and report to the committee on the business of the committee; that substitution be permitted on the subcommittee; that the presence of all members of the subcommittee is necessary to constitute a quorum; and that the subcommittee be composed of the following members: Mr Marchese as Chair, Ms Harrington, Mr Harnick and Mr Chiarelli.

**The Chair:** Any discussion on that motion? Seeing none, all in favour? Any opposed? That carries. Any other business?

**Mr Tilson:** I assume that some time we're going to be discussing agendas.

**The Chair:** Yes. It was my intent for us to remain behind with all of the whips to discuss that, but given that the Liberal member isn't here, perhaps we can talk about a date and then have a meeting with the subcommittee some time this week. Is that all right with you?

**Mr Tilson:** That's agreeable.

**The Chair:** Very well. Move adjournment?

**Mr Gordon Mills (Durham East):** So moved.

**The Chair:** All in favour? Unanimous. Thank you. The committee adjourned at 1536.

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- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
- Curling, Alvin (Scarborough North/-Nord L)
- \*Duignan, Noel (Halton North/-Nord ND)
- \*Harnick, Charles (Willowdale PC)
- \*Malkowski, Gary (York East/-Est ND)
- \*Mills, Gordon (Durham East/-Est ND)
- Murphy, Tim (St George-St David L)
- \*Tilson, David (Dufferin-Peel PC)
- Winninger, David (London South/-Sud ND)

\*In attendance / présents

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 4 May 1993



Standing committee on  
administration of justice

Subcommittee report

Chair: Rosario Marchese  
Clerk: Lisa Freedman

# Journal des débats (Hansard)

Mardi 4 mai 1993

Comité permanent de  
l'administration de la justice

Rapport de sous-comité

Présidente : Rosario Marchese  
Greffière : Lisa Freedman



### **Coat of arms**

A new coat of arms appears on the cover of Hansard. Presented to the Legislative Assembly of Ontario by the Governor General on 26 April 1993, it emphasizes the distinctive character of the Assembly and distinguishes the Assembly's identity from that of the government. It was created at this time to mark the bicentennial of the First Parliament of Upper Canada and the centennial of the present Legislative Building. Further information may be obtained by calling 416-325-7500.

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### **Les Armoiries**

Les nouvelles armoiries paraissent sur la couverture du Journal des débats. Présentées à l'Assemblée législative de l'Ontario par le gouverneur général le 26 avril 1993, elles soulignent le caractère distinct de l'Assemblée et mettent en valeur l'identité de l'Assemblée par rapport au gouvernement. Les armoiries ont été créées en ce moment pour marquer le bicentenaire du premier parlement du Haut-Canada et le centenaire du présent Édifice de l'Assemblée législative. De plus amples renseignements sont disponibles en composant le 416-325-7500.

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 4 May 1993

The committee met at 1605 in room 228.

## SUBCOMMITTEE REPORT

**The Chair (Mr Rosario Marchese):** I call the meeting to order. We met yesterday and had a subcommittee meeting and we agreed on a number of things, so what I will do is read through the subcommittee report and then we'll discuss it.

"Report of the subcommittee (1):

"Your subcommittee met on Monday 3 May 1993 and recommends the following:

"1. That the standing order 125 designation of 16 December 1991 with respect to rising crime rates be withdrawn.

"2. That the committee proceed with the standing order 125 designation of 4 December 1990 with respect to victims of crime and that the following witnesses be invited to appear:

"Cam Jackson, MPP; Priscilla de Villiers (Canadians Against Violence Everywhere Aimed at its Termination); Jennifer Raymond (Victims of Violence International Inc); Debbie Mahaffy (Canadians Against Pornography); Professor Irwin Waller; Scott Newark (Canadian Resource Centre for Victims of Crime); Carole Cameron (Victims of Violence Inc); Trudy Don (Ontario Association of Interval and Transition Houses);" Patricia Herdman...Pat Marshall...Pauline Duffett...Mary Lou Fassel...Virginia Foster...Dr Gordon Hope; Patrick Brode...Trisha St Alban...;

"and that witnesses be allotted 35 minutes for their presentation; two hours of committee time be reserved for the purpose of writing a report; the committee commence consideration as soon as witnesses can be scheduled.

"The witness list may be changed by the subcommittee."

Any discussion on the subcommittee report? Okay, seeing none—

**Mr Noel Duignan (Halton North):** Just that part of it—is there another part to that?

**The Chair:** There is another part. This requires unanimous consent. Is there unanimous consent for this report? All in favour? Any opposed? Agreed.

"Report of the subcommittee (2):

"Your subcommittee met on Monday 3 May 1993 and recommends the following with respect to Bill 89, An Act to amend the Health Protection and Promotion Act:

"1. That, assuming no public bills are referred to the committee, the committee will commence consideration of Bill 89 immediately following the completion of the

standing order 125 designation on victims of crime.

"2. That individual caucuses will submit proposed witness lists to the clerk prior to the completion of consideration of the standing order 125 designation on victims of crime. These witnesses and any other witnesses that contact the clerk directly will, subject to final approval by the subcommittee, be scheduled to appear before the committee."

Any discussion on that? Mr Winninger.

**Mr David Winninger (London South):** Question: Were these witnesses chosen by the clerk or recommended by the clerk?

**The Chair:** The witnesses on the first page?

**Mr Winninger:** Yes.

**The Chair:** As far as we know, it was Cam Jackson who prepared this list. It was a longer list and it has been reduced to the number that you see there in order to—

**Mr Winninger:** Was there reason why government caucus, for example, wasn't invited to submit names to the subcommittee?

**Mr Charles Harnick (Willowdale):** It's our 125.

**The Chair:** Yes, as a 125 designation—

**Mr Winninger:** Oh, you don't want to hear from any of our witnesses.

**Mr Robert Chiarelli (Ottawa West):** You still have the opportunity to do that.

**Mr Winninger:** That's what I thought.

**The Chair:** Mr Winninger, the reason why we added, "The witness list may be changed by the subcommittee"—it is something that can occur if people want to add to that list. If that is the case, if we have a few more people, we will reduce the witness time from 35 minutes to 30 or 25, depending on other names that could be submitted by other people.

**Mr Harnick:** Of course, subject to the subcommittee.

**The Chair:** That's right.

**Mr Chiarelli:** Some of these witnesses may not attend.

**The Chair:** That's very true. That's why we said the witness list may be changed by the subcommittee.

**Ms Margaret H. Harrington (Niagara Falls):** Where was that stated?

**Mr Duignan:** Right at the top it says that the committee will sit to consider standing order 125.

**The Chair:** We've approved this. Once we've approved the whole thing, we will call these people who are on this list and once we have a number of them, we

can begin as of next Monday. We anticipate that we can start with Monday.

**Mr Duignan:** It may take three or four weeks to get all these witnesses together to agree with them to a set of dates, and item 1 talks about Bill 89 will commence immediately following the completion of standing order 125. I was wondering how long that delay is going to be.

**Mr Harnick:** This only goes for 12 hours.

**Mr Duignan:** I know. We're still talking about four weeks.

**The Chair:** The first item is 12 hours. Once we've completed that, we will move on to the next item. That's why we have the second motion here that deals with that. What it does is to prepare us for Bill 89. As soon as we get approval or as soon as we get the list of people who will want to speak in place, and if we can begin next Monday, we will do so. If not, we can begin Tuesday. If no one is available for either of those two days, we'll meet the following week.

Any further discussion on the other item? All in favour? Any opposed? That carries.

The third item is the budget. What I would like to do is give you a moment to peruse that budget so that you have a sense of what we have put before you, and then we'll open it up for discussion.

You've seen the budget?

**Mr Harnick:** Yes.

**The Chair:** Okay, Mr Harnick.

**Mr Harnick:** Why do we have, in this budget, meal expenses, travel accommodation, travel and transportation if we don't know whether we're going anywhere? Is that just in anticipation of the fact that we might and we are obligated to put something in?

**Clerk of the Committee (Ms Lisa Freedman):** Yes, essentially what you'll notice is that on the second page, from simultaneous interpretation down, is essentially the base budget, which doesn't change. The first page is a guess, based on the past history of the justice committee, in terms of how long we will meet during the recess. The guess for this fiscal year would be six weeks over two recesses, including two weeks of travel. That's what the assumption is on the first page.

**Mr Harnick:** I don't have a problem, as long as I'm being told that this is merely something we have to go through because we have to submit something, but I'm not content to say that we're going to spend \$208,000. What I want to clarify is, if we do end up travelling and if we do end up needing meal expenses and things of that nature, will we be sitting down and preparing a definitive budget, or is this just set at such a high rate that it can almost cover anything that we might anticipate we're going to do?

**Clerk of the Committee:** Essentially, there are two

ways to go in preparing budgets. We have two options. One is to submit to the Board of Internal Economy simply a base budget of \$43,000 and then once a bill or matter is referred to the committee for the recess, we then, once we determine how many weeks we want to sit, can go back to the board for the exact amount that we need. One problem with that is that we cannot advertise for groups, make any air reservations or hotel reservations until the board actually meets and approves the budget, and in the recesses, sometimes that doesn't happen all that quickly. Therefore, the other option is to predict, and predict so that we hope to cover the expenses that may be incurred. So it's one or the other.

**Mr Harnick:** But we're not intent on actually having to spend this amount of money.

**Clerk of the Committee:** Correct.

**Mr Harnick:** In fact, we'll try and do it for a whole lot less than this, right? Can I have an answer on the record?

**The Chair:** Yes. The intent of this budget is to allow for the different possibilities. The intent is not to spend that amount, but to give it some flexibility so that if we need to, we have it, but it is not our wish to spend the amount that's there.

**Ms Harrington:** Just to help the members, I would ask the Chair if he could ask the clerk to just give us the background of last year and the year before, because it certainly helped us in the subcommittee to understand why the budget is this way.

**Clerk of the Committee:** Two years ago the amount that was budgeted for the justice committee was approximately \$389,000; last year the amount budgeted for the justice committee was approximately \$310,000; and this year we're budgeting approximately \$208,000.

**Ms Harrington:** What was actually spent?

**Clerk of the Committee:** Last year—I'm just pulling out the figures—we spent \$67,000. We spent the base budget of \$43,000—this committee did not travel during the recesses—and the remaining difference between the \$67,000 and \$43,000 was members' per diems that were paid out for sitting during the recess. But this committee did not travel, whereas the year before the committee considered Sunday shopping and was on the road for three weeks and I would say spent about 80% or 85% of the budget.

**Mr Chiarelli:** I would like to move an amendment to the motion to approve the subcommittee budget by moving that the committee budget be further reduced by 15%, to \$177,000. The reason for that is of the numbers that were just indicated for last year, for the year 1992, we actually spent \$67,000. Even assuming that there's a reasonable amount of activity, there's still a cushion of \$110,000. Notwithstanding that, if for some reason we should go over the \$177,000, there's always the option to go back to the Board of Internal Economy. I



would therefore move that the committee budget be further reduced by 15%, to \$177,000.

**Ms Harrington:** Why did you pick 15%?

**Mr Chiarelli:** It's just a matter of judgement.

**Ms Harrington:** Just out of the air. Okay.

**Mr Chiarelli:** It's not out of the air in the sense that if we spent \$67,000 last year on the basis of a level of activity that was below the norm, if we anticipate that we would have a level of activity that is closer to the norm, I'm picking out of the air that the figure of \$110,000 probably should be sufficient. Notwithstanding that, you always have the option to go back to the Board of Internal Economy to ask for additional funds.

**Ms Harrington:** Just to point out to you, apparently the budget last year was over \$300,000 and they spent \$67,000 or \$66,000.

**Mr Chiarelli:** Would you not agree that it might be reasonable to expect the budget this year at most to be about two and a half times what we spent last year, which would bring it to my reduced figure of about \$177,000?

**Ms Harrington:** I have no way of guessing at it.

**The Chair:** Okay. I have Mr Winninger on the list. Can I just put forth Mr Chiarelli's proposed motion? That is that the budget be reduced to \$177,00. Okay? Discussion on that?

**Mr Winninger:** I was just going to say that everyone around the table is certainly keenly aware of the government's fiscal constraints and I think Mr Chiarelli's suggestion is a good one because it would exhibit sound fiscal management to the public.

**Mr Harnick:** May I offer an amendment which I hope will be a friendly amendment to Mr Chiarelli's motion? I would like to amend it by saying that the budget be frozen at \$43,000 plus a reasonable allowance for advertising that we may have to do, and then any further expenditures we decide upon and then go to the Board of Internal Economy. I'm almost inclined to think that maybe we could even set an example in this committee by doing away with our per diems and be the first committee that sits without the necessity of per diems.

**The Chair:** All right. What Mr Harnick is proposing is rather different in terms of the proposed motion. I think it's contrary.

**Mr Harnick:** I don't want there to be too much consternation, so maybe we can ask Mr Chiarelli whether he would accept a friendly amendment to the budget being \$43,000 plus an amount that the clerk can tell us would be necessary for her to have the ability to do the advertising on short notice without having to go back to the Board of Internal Economy.

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**Clerk of the Committee:** The amount required for

one advertisement is approximately \$20,000.

**Mr Harnick:** And how many advertisements would you need?

**Clerk of the Committee:** We would need approximately one advertisement per matter, and generally the justice committee considers approximately one matter in the recess.

**Mr Harnick:** If we were to put in an amount that would be then \$65,000, or even \$85,000 in case there were two matters.

**Mr Chiarelli:** That brings it down to my \$177,000.

**Mr Harnick:** It would be \$43,000 plus \$40,000.

**The Chair:** Mr Chiarelli, let me ask you, are you interesting in either standing down your motion or changing your motion in order to accommodate this or no?

**Mr Chiarelli:** I'm interested in doing what was suggested and showing some example of restraint, and I don't care how we get to that point. All I know is that in practice the justice committee last year spent \$67,000 out of a budget of \$310,000, and that I think shows restraint, but I don't think we should be going around allocating and asking to have set aside reserves of budgets which are way in excess of what we anticipate spending. So I would accept a friendly amendment, whether it's changing the budget to \$80,000 or \$90,000. We always have the option to go back to the Board of Internal Economy in any case if the committee is seized with additional bills or travel in the course of the session.

**The Chair:** All right, let's get further discussion. Mr Winninger first and Mr Wilson after.

**Mr Winninger:** I have some concerns about Mr Harnick's friendly amendment in that I think if there is to be any policy change with regard to the payment of per diems, it should be done in the proper forum. Now, whether that's the House leaders, the Board of Internal Economy or whatever, I don't think it's up to this committee, even though it has some control over its budget, to be making precedent-setting rulings on whether per diems should be paid or not. I think that should be done in a more consistent and uniform manner in the appropriate forum, and I don't believe this is the forum to deal with it.

**The Chair:** If I can—

**Mr Harnick:** I'm quite content to withdraw that aspect of it so you don't have to talk about it any more.

**The Chair:** I was about to suggest that if we still wanted to talk about that, we separate that issue from the other issue of the budget.

**Mr Harnick:** I've spoken with the clerk briefly, and the amount that she says would be the basic budget amount is \$43,000 plus an additional \$40,000 for advertising, which gives the opportunity to advertise on

two occasions, so I hope my friend would accept a friendly amendment to set the budget at \$83,000.

**The Chair:** All right. Speaking to that then, I have Mr Mills.

**Mr Chiarelli:** The friendly amendment—basically, we're drafting the amendment as we talk. I would prefer to pick up another point of yours and I would suggest that the committee budget be set at \$83,000 with a recommendation to the Board of Internal Economy for the right to discuss the elimination of per diems.

**The Chair:** Okay. Is that your motion then?

**Mr Chiarelli:** Yes.

**The Chair:** Mr Harnick, it seems that you're in agreement with that?

**Mr Harnick:** Yes.

**The Chair:** Discussion on that, Mr Mills.

**Mr Gordon Mills (Durham East):** I just want some clarification in that if we are on the road here and we sort of find ourselves in a financial bind, we're going back to the Board of Internal Economy. Sort of grind this committee to a halt while we get that, or will it be sort of ongoing? That really to me is crucial.

**Clerk of the Committee:** In terms of going to the Board of Internal Economy for a supplementary budget, there are two options. If the board's meeting, then it would be considered at a meeting. If not, there are provisions to walk a budget around to the board members to get them to sign off if they approve.

**Mr Mills:** So what you're telling me, Lisa, is that we would not grind to a halt waiting for this authority.

**Clerk of the Committee:** I don't think I'm quite comfortable saying that.

**Mr Mills:** Mr Chair, I'd just like to say that, given the experience of the clerk, I don't think why we sort of have to run around looking so—with halos on our heads. If we don't use this money, it's not going to be spent; it's going to go back in. I don't see any difficulty with it. Rather than risk some delay when we've got witnesses lined up—we're supposed to be going somewhere and we're running around trying to get a signature to see if we can go there. I don't think that makes really good common sense.

**The Chair:** Further discussion? Mr Chiarelli.

**Mr Chiarelli:** On that point I'd like to comment. I don't think it's an insignificant point. If the Board of Internal Economy receives a request from this committee that we might have to spend up to—what is the budgeted amount?

**The Chair:** It's \$208,000.

**Mr Chiarelli:** If it's \$208,000, it's got to make provision in its budget for the possibility of spending that amount of money. If, on the other hand, the likelihood is \$80,000, it makes a big difference.

Now, it may not seem like a significant development if that were simply applied to the justice committee, but if every standing committee of the Legislature decided to eliminate its possible budget reserve, if I can call it that, by \$150,000 or \$200,000, then you're talking real money.

**Mr Mills:** Yes, but we don't know if they're going to agree to this. It's just here.

**Ms Harrington:** That was my concern as well, the same as Mr Mills's: Would it cause a problem of delay with regard to our committee? So I would like to ask the clerk again. If she would agree with this, I would certainly support it, because I believe we should make some appropriate restraint or step in that direction and it should have a rationale behind it, so that's why I would support this motion. It shows why we are getting to that figure instead of just pulling a figure out of the air. I have no problem with it as long as the clerk feels that this is quite okay.

**Clerk of the Committee:** I'll do whatever the committee instructs me to do.

**Ms Harrington:** Oh. You're the one with the expertise, though, in doing this.

**Clerk of the Committee:** Whatever the committee instructs.

**Mr Harnick:** In response to Mr Mills's comments, I think what tends to happen, if we have a global budget that is set high enough to accommodate any contingency, when the contingency arises, we then never have the opportunity to sit down and review the money that we actually need to spend. We merely say: "Well, it's in the budget. The budget's \$208,000, therefore we can do it any way we want to do it."

I think the responsible course is to review the proposed expenditures at the time that we know they have to be made, to ensure that we're not spending money that happens to be in the budget, and we can spend some time finding out the best way to most economically proceed. That's why I can't agree with the comments of Mr Mills. I would tend to support the idea of an \$83,000 budget, and if we have other expenditures that this committee needs to make, we review them on a case-by-case basis.

**The Chair:** Okay. Mr Duignan.

**Mr Duignan:** Could you read the second part of that motion?

**The Chair:** Sure.

**Clerk of the Committee:** I'd be happy if Mr Chiarelli clarified the second part of the motion.

**Mr Chiarelli:** Okay, I'll try to rephrase it in its final form.

The motion is that the committee budget be set at \$83,000, approximately, and that the Chair of the



committee or the clerk of the committee be instructed to canvass with the Board of Internal Economy the appropriateness of our committee debating the elimination of per diems for members.

**The Chair:** Okay. Let me just see. Mr Duignan, do you want to speak to that?

**Mr Duignan:** I want to speak to that.

**Mr Mills:** Me too.

**Mr Duignan:** The question is that here we're setting policy around this. Is part of that motion as well that, for example, the legitimate expenses of members then will be assumed if the per diems are eliminated?

**Mr Chiarelli:** The per diem does not refer to expenses. "Per diem" means the per diem, what you're being paid to attend a committee as remuneration.

**Mr Duignan:** While I may be in favour of the \$83,000 budget for the committee, Mr Chairman, I have a problem with the second part of that motion, that we may set policy in relation to ongoing discussions between the House leaders of the whole question of per diems and other matters relating to members' remuneration in this place.

1630

**Mr Chiarelli:** The appropriateness of our dealing with it in this committee is what we're asking for. The Board of Internal Economy will say, "No, it's not appropriate for you to be discussing the per diems," or it will say, "Yes, you can." If it says, "Yes, you can," then we will entertain a discussion and a debate at the committee.

**The Chair:** Mr Chiarelli, it's quite clear: This is the motion and we may want to debate it here or we may not. We may want to support the motion or not.

**Mr Mills:** I'm just wondering, Mr Chair, the bindingness of what we're saying here on other committees. The clerk goes to the appropriate authority and they say yes. Does that mean that it's just this committee that's operating like that? Is it binding on other committees?

**The Chair:** No, it wouldn't be binding.

**Mr Mills:** If it's only for this committee—

**Mr Chiarelli:** This motion doesn't even make a decision on per diems. This motion simply says, "Is it appropriate for us to debate the elimination of per diems?" It doesn't say—we're not even asking for approval of that.

**Mr Mills:** Okay. I didn't quite see it that way.

**The Chair:** But, Mr Chiarelli, my sense is—and the clerk might correct me—if this is a motion, I'm not entirely certain that we need to get approval from the Board of Internal Economy as to whether we want to do that or not. If that's a motion of this committee, I presume that we could do that if we wanted to. If we don't, then we don't. I don't think that you need to refer it for approval to do that. I thought your original motion

read that way, that we do this and then we debate whether—that we remove the per diems is the way I thought I heard the original motion.

**Mr Harnick:** That was what I said. Mr Chiarelli didn't agree with that in so far as a friendly amendment to his original motion, and he in fact changed it to referring it to the Board of Internal Economy to see if it was appropriate for us. He didn't want to necessarily eliminate the per diems; he just wants to know whether the Board of Internal Economy thinks it's appropriate for us to debate it.

**The Chair:** Mr Harnick, my sense is that if this is what the committee wants to do, it can. We're debating it now. If you want to get rid of the per diems, you can. You should be reminded that if you as a member want to refuse it, you don't have to accept it.

**Mr Chiarelli:** The fact of the matter is—

**Mr Harnick:** The motion is there. Now, you can vote against it, then bring your own motion.

**The Chair:** Okay, that's fine.

**Mr Chiarelli:** By way of explanation, the issue was raised as to whether or not this is the proper forum to be discussing our per diems. I agree that that's a proper question and therefore it should be referred to the Board of Internal Economy, because in fact it probably has to be changed by motion in the House, by a resolution or a motion in the House.

**The Chair:** All right, we'll leave it the way you propose. Can we suggest that we separate the motion into two parts so that we deal with the budget—

**Mr Harnick:** No.

**The Chair:** You want that as one motion?

**Mr Harnick:** The motion is now before us. What we can do is we can vote on it, and if members don't want to vote for it, they can vote against it and propose their own motion.

**The Chair:** Very well. Thank you. That's quite clear.

**Mr Duignan:** A suggestion to the member is that maybe the committee could look at a motion of this nature directed to the Legislative Assembly committee, which basically looks after the standing orders and the benefits, remuneration etc of members. Maybe that's the forum that this type of debate should take place in.

**The Chair:** All right, let me canvass the other members. Mr Mills, you had spoken, if I remember.

**Mr Mills:** Yes.

**The Chair:** Mr Winner?

**Mr Winner:** I just want to be clear on what the resolution with the friendly amendment covers. Does it cover all of the expenditure items on the budget from advertising down to miscellaneous? And that equals approximately the amount that was cited by Mr Chiarelli.

**Mr Chiarelli:** That's \$83,000.

**Mr Winner:** Yes, okay.

**Mr Chiarelli:** Call the question.

**The Chair:** Okay. All in favour of the motion that's been put forth? Opposed? It's defeated.

**Mr Harnick:** Could we have a recorded vote?

**Mr Randy R. Hope (Chatham-Kent):** It's too late.

**The Chair:** It's too late once we've—

**Mr Hope:** I would move that the budget being presented by—

**The Chair:** It's too late, Mr Harnick, once we've called the vote.

**Mr Harnick:** I was getting a glass of water. I wasn't even in my seat.

**The Chair:** Once the vote has been called, it's hard to go back to—

**Mr Harnick:** For the record then, we know that it was the NDP caucus that voted against the motion.

**Mr Hope:** I move that the budget being prepared by the clerk be adopted.

**The Chair:** No, we should remember that this budget was prepared by the subcommittee.

**Mr Hope:** Well, the subcommittee.

**The Chair:** Just as a way of correction. Any discussion on that?

**Mr Chiarelli:** I'll vote against the motion. The reason I will vote against the motion is that last year this committee spent \$67,000 in its activities; the clerk has indicated the likelihood of having to spend \$83,000, and any excess over \$83,000 is a reserve fund which is not necessary at this time, particularly in view of the fact that at any time this committee can make an application to the Board of Internal Economy to have its budget increased for reasonable and necessary expenses. Just to repeat what was stated before, I don't think we should be allocating budget for which there is no perceived need at the present time.

**Mr Duignan:** Why did the subcommittee make this recommendation, then? Surely you're part of the subcommittee. Why did you make this recommendation to the committee?

**Mr Mills:** That's a good question.

**The Chair:** Any other discussion?

**Mr Duignan:** I call the question, Mr Chair.

**The Chair:** Are you moving closure, Mr Duignan?

**Mr Duignan:** I call the question.

**The Chair:** All in favour of the closure motion?

**Mr Winner:** I wanted to suggest—

**The Chair:** There's no debate on this. All in favour of the closure motion? Opposed? People who are here should vote. If you don't want to vote in favour of that and you want further changes, don't vote in favour of

closure, if somebody wants to make a suggested change. All in favour of closure? Opposed? Okay, that was defeated. Any further discussion on that motion?

**Mr Harnick:** We won? I can't believe it.

**Mr Hope:** Some people are entitled to their freedom of speech.

**The Chair:** Mr Winner.

**Mr Winner:** I wanted to suggest a friendly amendment to the motion along the lines of Mr Chiarelli's original recommendation, which was that we deduct 15% from the amount of the budget, and I so move.

**The Chair:** Would that be an acceptable friendly amendment, Mr Hope? Okay. So the proposed budget and the motion would be that the budget be \$177,000?

**Interjection:** Right.

**Mr Harnick:** Can I propose yet another friendly amendment? That would be to lower it to \$83,000, without the rider that we consider—

**Mr Hope:** We said no, so why debate it?

**Mr Winner:** No means no.

**Mr Harnick:** Spend, spend, spend.

**Mr Hope:** Well, you're on the subcommittee.

**Mr Harnick:** I wasn't on the subcommittee.

**The Chair:** Mr Harnick, do you want to move that as an amendment?

**Mr Harnick:** Yes. I would move as an amendment that we set the budget at \$83,000.

**The Chair:** Very well, we're debating that amendment. All in favour of that amendment?

**Mr Hope:** You said friendly amendment, didn't you?

**The Chair:** Any discussion on that amendment? Seeing none—

**Mr Chiarelli:** Recorded vote.

**The Chair:** Recorded vote. All in favour of that amendment?

**Clerk of the Committee:** Mr Chiarelli, Mr Murphy, Mr Harnick.

**The Chair:** Opposed?

*Interjections.*

**Clerk of the Committee:** Ms Harrington, Mr Malkowski, Mr Hope—

**The Chair:** Hold on.

**Mr Harnick:** Spend, spend, spend.

**Mr Hope:** On a point of order: How can you vote on an amendment that was originally a motion? It's unparliamentary to do that. He's presented an amendment that was an original motion, which was then called for, which was voted down. You can't do that.

**Mr Chiarelli:** It's not true.



**Mr Hope:** It is so. Check Roberts' Rules of Order and you'll find out. Check the rules.

**The Chair:** Mr Hope, I'm advised that it was a two-part motion, so it's relatively different, I guess it can be argued.

*Interjections.*

**The Chair:** Mr Hope, Mr Harnick. I'd like to bring us back to that, back to the main motion, all right? All in favour of that motion?

**Ayes**

Duignan, Harrington, Hope, Malkowski, Mills, Winner.

**The Chair:** Opposed?

**Nays**

Chiarelli, Harnick, Murphy.

**The Chair:** That motion carries.

**Mr Duignan:** On a point of clarification: For the record, was this budget submitted by this—

*Interjection.*

**The Chair:** Mr Duignan, I can't hear you. I'm going to ask Mr Harnick to please—

**Mr Duignan:** This budget submitted by the subcommittee to this committee, was it approved unanimously by that subcommittee?

**The Chair:** We didn't have three caucus whips at the meeting, and we had to then consult Mr Chiarelli, which we have done today. So there weren't three parties.

**Clerk of the Committee:** Just to clarify, there was not support to the budget; therefore, that's why it came forward as a motion today and not as a recommendation of the subcommittee.

**Mr Harnick:** There you go, Mr Hope. Talk about a space between your ears; yours is a cavern.

**Mr Chiarelli:** If I can simply make a comment for the record: Subcommittee decisions are brought to the committee for approval, and that's what we're here for today.

**The Chair:** Of course. Absolutely. Any further matter? Seeing none, adjournment. All in favour? Any opposed? Thank you.

The committee adjourned at 1641.







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- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)  
Akande, Zanana L. (St Andrew-St Patrick ND)
- \*Chiarelli, Robert (Ottawa West/-Ouest L)  
Curling, Alvin (Scarborough North/-Nord L)
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- \*Mills, Gordon (Durham East/-Est ND)
- \*Murphy, Tim (St George-St David L)  
Tilson, David (Dufferin-Peel PC)
- \*Winninger, David (London South/-Sud ND)

\*In attendance / présents

**Substitutions present/ Membres remplaçants présents:**

Hope, Randy R. (Chatham-Kent ND) for Ms Akande

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 17 May 1993

# Journal des débats (Hansard)

Lundi 17 mai 1993

## Standing committee on administration of justice

Victims of crime

## Comité permanent de l'administration de la justice

Victimes d'actes criminels

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman



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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 17 May 1993

The committee met at 1541 in committee room 2.

## VICTIMS OF CRIME

Consideration of the designated matter pursuant to standing order 125, relating to victims of crime.

**The Chair (Mr Rosario Marchese):** I call the meeting to order. I'd like to welcome everybody. We have made some attempts to get some Liberal members here, and I suspect they'll be here shortly, but we tried. We don't want to hold up the proceedings, so we're going to begin.

We had a subcommittee report to present, but we'll hold on that until some of the Liberal members come, in order to get their agreement on what we have done. Once they're here, we'll do that later.

So we'll begin right away on this whole matter regarding standing order 125 designation on victims of crime. To put this on the record, I will read, "The current status of and improvement upon the relationship between victims of crime in the province of Ontario and the justice system in that province, with particular consideration of the issue of a victims' bill of rights, including the operations of the Criminal Injuries Compensation Board."

## VICTIMS OF VIOLENCE INTERNATIONAL INC

**The Chair:** Okay, I'd like to call the first witness that we have here, presenter Jennifer Raymond. Welcome, Jennifer. Jennifer, you might have been told that you have half an hour in this presentation.

**Ms Jennifer Raymond:** Yes.

**The Chair:** If you would like members to ask you questions, hopefully you will keep it to 15 minutes in order to allow for that. If you want to go longer, you can. Okay? Jennifer, whenever you feel you want to begin, please do so.

**Ms Raymond:** I've never spoken before a committee. I've never really spoken before more people than, say, a living room full of people, and then usually only people I know, so you're going to have to unfortunately bear with me.

I'm representing Victims of Violence. Victims of Violence International Inc is based in Ottawa. It's run by Sharon and Gary Rosenfeldt. They're originally from the west coast area. Their son was one of the 11 that was murdered by Clifford Olson. Sharon's experiences are dated in 1981, which was when her son Daryn was murdered. She asked me to represent today because I was assaulted in 1992, so my experiences would be a little more recent than what happened in 1981. A little pamphlet is the first page. I'm sure everyone can read

what Victims of Violence represents and what we stand for.

I first found out that there was going to be any sort of bill presented through an MPP in our area, Don Abel's office. They sort of mentioned that something would be coming up and that perhaps it would be fortunate if there would be some public hearings. So I'm very, very happy that there are some public hearings. I think briefs are very important, but somehow you can't ask a brief a question should it pop into your mind. Therefore, it's occasionally good to have people here, and again, as I said, what happened to me happened in 1992, with the investigation still continuing now. It happened in the Hamilton-Wentworth area, so I'm going to restrict myself to what happens in that area. I don't know what happens here in Toronto or Peel or otherwise.

There have been no arrests in my case at this time, so I don't know what happens when you have to go in front of a courtroom. Again, I won't speak about that area. But most of what happens to victims happens immediately after a crime and has to be addressed very shortly thereafter. So I think you'll still find this good.

It's one of the hardest things for me to sit and tell people that the police were the easiest and kindest people that we had to deal with after the assault. They were hardly all-believing; they were quite serious, quite concerned. They had an investigation to do, but they did it with what we found was a lot of respect, honesty to any question we asked. Whenever a feeling would be hurt, which happens after a violent crime, they were always very quick to apologize, and they were extremely sensitive to how hard it is. I'm married and I do have children, and they were quite sensitive not only for my feelings but they extended their sensitivity to my husband and also my children. Many times they've been very reassuring and extremely caring with what they've said. They provided us, for example, with the staff sergeant's home number and a 24-hour number for me to call should something be happening in my case. We had a rather extensive case; we had bounty hunters in our barn and clairvoyants on our doorstep. It was quite the scene for a while there.

Everything else kind of goes downhill from about there, unfortunately. We have one victims services group—it's on page 1 of, not my written notes, but in the printed notes in the top portion; I have places underlined there—called Victims Services. What they do is, after some sort of violence or sudden death, they will come to a person's home.

Hamilton-Wentworth of course is a rather large area. We were one of the last people to even obtain a victims services. It says here, and I'll read, "The board...approved Police Chief Robert Middaugh's plan to finance for at least the next 12 months an organization the chief has said 'We can't afford to cut.'" I'm sure he's in a very good position to realize what is needed.

Further, "When it started last May, Victims Services was funded by the Ontario government, the region and the board. Earlier this year, however, the province withdrew its aid." It didn't do that for the reason that it's not being used, as victims services is being used. It was done for, I guess, financial squeeze reasons; no other reasons could be made available.

I found this very, very distressing as the Elizabeth Fry Society, which works mainly with offenders, has full funding. And I think that's fine; offender programs must be addressed, but I don't see why victims programs can't be.

The other institution, if you want to call it that, is the sexual assault centre of Hamilton-Wentworth area. My experiences with them were quite interesting at best, and I have a newspaper article; I couldn't make copies of it all because it is an extremely large one. It's written from both sides of the perspective. There was an extreme controversy in our area. They do profess to be militant radical feminists, which if one wishes to be that, that's fine. I will say that doesn't belong with crime victims, to have to hear everything that the police have ever done wrong, every assault that's ever happened. It really doesn't help a person in a raw state. But I think it's best if you make your own decision by reading this article.

The suggestion that I had and that doesn't exist in our area is on page 2 of my enclosure. It's an interview done with Dr Charles Figley, who's considered to be an expert on the subject of victimization and post-traumatic stress disorder. He's asked a question about secondary injury, which is the perceived lack of support and perceived rejection by the community and society, by friends and others.

The question is, "What are the therapies, the social support system that you personally believe are the most effective in treating this kind of second injury?" And he unequivocally says: "Contact with fellow survivors. Those who share the injuries are major sources of reassurance, strength, encouragement, guidance, and counsel...if survivors can judge their own behaviour, not in contrast to the way they were before, or to those who have never had to survive a crisis...they will see...that there's a beginning, a middle and an end."

Sharon Rosenfeldt, who is the president of Victims of Violence, being a victim herself, she's for ever been on the phone to me, always giving whatever encouragement I needed. The only way I found her though was through

the police association of Ottawa on a local television station. There was nobody telling me how to find somebody like that.

When I was assaulted I was employed with a company and I got to experience discrimination in the worst possible manner. They had no tolerance for a police investigation and made that very clear. Investigators were not even to step a foot in the building. They eventually started—

**The Chair:** Go right ahead.

**Ms Raymond:** Sorry, I didn't know—

**The Chair:** This is for questions for later.

**Ms Raymond:** All right. Though I was accepting a promotion at that time and still given a promotion even after the assault—I was a liked employee—it was not something that they wished to deal with. They were afraid of either the media or whatever else. In any case, I was dismissed once in December. When they had that challenged they had to take me back but forced me into disability and then finally in March decided, while still on disability, that they wanted no more part of this and they dismissed me. They even told lawyers from the human rights this, that they were dismissing me for no grounds other than that I was a victim of crime.

Unfortunately, the Human Rights Code has absolutely nothing in it. You can be dismissed for being a victim of crime and they can't help you. So with the help of lawyers, we managed to figure out that since I had post-traumatic stress, we can squeeze it in somehow still. It's sad that being a victim of crime somehow doesn't count, but if you, for example, don't like it that your company is going to force you into pension, you can go to the Human Rights Commission.

1550

One of the more interesting things—that's what I wrote there—is I was always told to pull myself up by the bootstraps and smile. I don't know how many people would usually say that to crime victims, but it was an exceptional situation.

I started doing research after that into seeing what was actually ever done to address the needs of crime victims, and what was written in the 1980s is astounding. Many things regarding, for example, domestic assaults and incest survivors have been extensively researched and put into place, but it seems like all other groups of violent crime are kind of put to the wayside. It just isn't there.

One idea that was put forward—it's in the very last section. It's in a book called *The Invisible Victim*. It starts on page 6 of the enclosure. Robert Reiff is speaking from the American perspective, but it could possibly be addressed in a Canadian perspective too. He states, "The federal government has given aid to victims of fire, flood, earthquakes, tornadoes and even grasshopper ravages since 1827."



On the last page he says, "Disaster measures are rendered without question of entitlements, deservedness or prejudice." Further, that the response to a natural disaster is heroic. They'll help complete strangers. "Many people mobilize within themselves unusual courage and stamina."

Then the very last paragraph is really where the crux is:

"The public has a general attitude that becoming a victim of a violent crime is part of the...normal pattern of existence. Most people consider individuals who suffer the disastrous effects of violent crime as unfortunate victims of their own lifestyle. They are thought unlucky and are promptly forgotten. In most natural disasters people are usually blameless—and helpless to stop them...Averting or minimizing the disaster by placing the responsibility on someone or something else is futile...Once blaming begins, people fix their attention on the cause of a disaster and become indifferent...to the effect on its victims."

I think if any one of us were to encounter a victim from Hurricane Andrew, none of us would say: "Well, it's your own fault for living beside the ocean. Why did you do that?" Or for those who were killed in the San Francisco quake, nobody would say: "Well, you chose to live on a fault line. You got what you deserved." But it's appalling how many victims of crime got it. I got, "Well, why did you walk your dog?" The family of Nina de Villiers got, "What was she doing jogging alone?" We had every right to walk our dogs and jog and anything else.

When it comes to the finances, which is something that is a subject that I think any victim of crime will tell you, you need money for legal advice. I have to fight my company; you obviously need lawyers to do that. I have two small children; I need day care. Other families who have had other members of their family murdered also have small children and desperately need day care. You can't look after your children when you're having to go to doctors and go through a police investigation. I also requested counselling. I have to pay that for myself as well. My opinion is, grants or interest-free loans could be provided until compensation can be realized through civil suits or through the victims' compensation board.

Crime is a man-made disaster, and as we saw in the disaster that happened in Mississauga, the train derailment, we accepted that as a man-made disaster and acted accordingly. The crime statistics will show you that it is a disaster as well.

Then I've summarized my four points:

If the province could free up funds and give grants or interest-free loans to violent crime victims, these could be repaid when other compensation arrives. The suggestion was made by those whom I've spoken with that if

the fine surcharge tax was promptly collected and stringently imposed on offenders, this would not place undue hardship on taxpayers.

Violent crime victims with post-traumatic stress should be treated not as mentally unstable but as compassionately and with as much understanding as we extend to war veterans. There was, of course, that \$10-million study done on the Vietnam vets which launched post-traumatic stress and its effects, showing that it is not the victims' original mental health but the stress and duration of the crime that has affected them.

There is a desperate need for improved funding of victims' programs and the creation of new ones. That is not just on the provincial level but also for communities.

I feel the police deserve commendation for the sensitivity and concern that they are now extending to crime victims and for the initiative they are taking to even fund such things when other funding isn't available. I thank you very much.

**The Chair:** Thank you, Ms Raymond.

We have about 17 minutes or so left, and I'd like to give Mr Jackson the first opportunity to ask some questions.

**Mr Cameron Jackson (Burlington South):** Jennifer, welcome, and thank you for your contribution. Don't be worried about public presentations; you did just fine.

I have had occasion to work with the Rosenfeldts over quite a few years and have talked with families who've suffered as you have. Others have endured loss of life. You've hit on quite a few of the points that they have raised, but I wonder if we could explore a couple of issues that you feel comfortable with around your case. Your experience with the police was that they advised you what services might be available to you.

**Ms Raymond:** Yes.

**Mr Jackson:** What were those services?

**Ms Raymond:** First of all, they advised me of victims services, and then afterwards when they saw that I probably needed a little more counselling—they were instructed at the time of their mandate to send any female in crisis to the sexual assault centre. I didn't know anything about it really. I didn't even call them myself. The police called on my behalf because I was in fairly bad shape.

**Mr Jackson:** They had your permission, though?

**Ms Raymond:** Oh, yes.

**Mr Jackson:** So you had access to that service. Victims services was the arm of the police department?

**Ms Raymond:** I sort of say they're like the ambulance. They come to the scene. They can't operate, but they will come immediately. You need more counselling.

**Mr Jackson:** It's a combination of officers and—

**Ms Raymond:** No, no. There are no officers there at all.

**Mr Jackson:** —lay people in the program?

**Ms Raymond:** No, not at all.

**Mr Jackson:** They're all lay people?

**Ms Raymond:** One, I believe, worked in social services—he would have been from the Toronto area—and then the rest are mainly volunteers.

**Mr Jackson:** Okay. There are aspects of your victimization which you may or may not also face. We could get—well, I wanted to deal with the employment aspect, if I could. Since it's a matter of public record, who was your employer?

**Ms Raymond:** I don't know if I'm permitted to say that.

**Mr Jackson:** Well, it's a matter of public record.

**Ms Raymond:** Sure. It's John Bear Pontiac Buick Cadillac.

**Mr Jackson:** Okay. That matter is currently before the courts?

**Ms Raymond:** It's currently before the Human Rights Commission.

**Mr Jackson:** You're paying for that lawyer, or the Human Rights Commission has taken up your case and will advance it on your behalf?

**Ms Raymond:** The Human Rights Commission has never had to deal with a situation like this. They don't know, since it's in the middle of a police investigation, what they have to present and what they have to conceal. The police obviously don't want an investigation to be damaged because of something having to go to human rights. So I have a lawyer retained to help me for wrongful dismissal and then to assist in the Human Rights Commission's hearing to deal with what to do with crime victims.

**Mr Jackson:** That is a lawyer you've engaged at your own expense?

**Ms Raymond:** Yes.

**Mr Jackson:** Okay. Legal aid is not available to you?

**Ms Raymond:** No.

**Mr Jackson:** The third aspect of it: Should there be an arrest, you will then become part of the system of justice, so-called, in this province. What, if anything, have you been advised of the services that will be available to you should that occur?

**Ms Raymond:** I would have no idea. The best I ever had was a little pamphlet—

**Mr Jackson:** Yes, and no one's explained—

**Ms Raymond:** No.

**Mr Jackson:** —what services might be available in

the Hamilton-Wentworth—

**Ms Raymond:** I have researched what is available in Hamilton-Wentworth and there isn't very much, as I said. There's victims services and the sex assault centre and that's about it.

**Mr Jackson:** Mr Chairman, cut me off when—

**The Chair:** Go ahead.

**Mr Jackson:** Are you advised—do you have periodic contact with the police?

**Ms Raymond:** Oh, yes.

**Mr Jackson:** How frequently? The details of which you should not share with us, but are they—one of the issues that I raise in the victims' bill of rights is this relationship which exists between the victim—who is fundamental to catching the criminal but more fundamentally to the conviction of the criminal because you'll be required in court absolutely, and for that reason there should be an ongoing relationship of explaining to you matters of the investigation and—

**Ms Raymond:** They've answered any questions that I've ever had, usually in excess of what I actually wanted to know. They return calls promptly, always. The only thing is, at this particular stage of the game I don't really want to know some things.

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**Mr Jackson:** That's fair and that's understandable, given what you've gone through.

I will yield, Mr Chair, and thank you for the time. I appreciated your first point about the surcharge and the tax and the degree to which it is being utilized in this province and the degree to which it goes into general revenues, which goes into the same fund we pay for roads, or it is specifically funneled towards victim services, which is what is occurring in some provinces in Canada but not in Ontario, directly. Thank you very much.

**Mr Gary Malkowski (York East):** Thank you very much for your presentation. I found it very important information but I thought it was also important for you to talk about your experience with us.

There were a couple of points you raised that I think are very valid and thank you for sharing them with us. But there's one thing you talked about, you mentioned a victims' program, saying it's not available in the Hamilton area, or not funded. There is a program called victim/witness assistance program that is offered within the Hamilton area and it provides support services and it gives you information about the justice system. Are you familiar with that program or that service specifically?

**Ms Raymond:** Are we talking about victims services? I would just know them under that name of victims services.

**Mr Malkowski:** Yes, I'm talking about victims



services. What services have you received from there, if you could make some comment about that?

**Ms Raymond:** Jim Dodds is an incredible man. He is one of the most gentle, kind individuals I have ever seen. He would do anything to help a victim of crime. He is restricted, though, in what he can do. He is not a counsellor or a therapist. All he can do is say, "That's awful," and he can say it in one of the nicest manners possible. He can refer a few pamphlets. He can't recommend any therapy or treatment. He can't recommend where to go. He can just be there when it does go to court or come to the scene of the crime, and that's as far as he's limited to.

**Mr Jackson:** He works for the police.

**Ms Raymond:** Now, seeing as that they're paying, yes.

**The Chair:** Any further questions?

**Mr Malkowski:** No, thank you.

**Mr David Winninger (London South):** Just following up on Mr Malkowski's comment, I too would like to thank you, incidentally, for sharing your experience with the committee today.

Mr Malkowski was referring to one of 13 different victim/witness assistance programs across the province, and one of them is located in Hamilton. What that program does is, as Mr Malkowski said, it provides emotional support to victims, helps them with courtroom orientation and liaises with the police and the crown, just to name a few of its functions.

It's fortunate too that victims services of Hamilton-Wentworth has been extended, but I think Mr Malkowski's point was that the Ministry of the Attorney General is providing funding already to another program in Hamilton, along with 12 other cities across Ontario, to assist victims and witnesses who are undergoing the court process. As well—

**Ms Raymond:** Why are these people not mentioned immediately to victims of crime? I wouldn't understand that then, if you're saying there's already another program in the Hamilton area.

**Mr Winninger:** There's a program associated with the courts that provides support for victims and witnesses who are involved in the court process.

**Mr Jackson:** Once there's a charge.

**Ms Raymond:** Okay. Well, there's no charge.

**Mr Winninger:** Similarly, in London and Ottawa there are also two projects that assist child witnesses to give evidence before the courts and have proven quite successful in increasing the rate of convictions and guilty pleas.

So the suggestion, I think, coming from Mr Jackson was that the offender surcharge is not being used for proactive assistance to victims of crime, I'm giving you some—

**Mr Jackson:** On a point of order, Mr Chair: I did not say that. I chose my words very—no, be careful with this. I did not say that. I said that it was not allocated directly to those programs; it went into general revenues. Those are statements of fact. I tried very carefully not to mislead anybody.

**Mr Winninger:** These revenues—

*Interjection.*

**Mr Jackson:** No, no, but he has to be fair as well. I'm not trying to mislead the witness. I said very clearly that it goes into general revenue, period, end of sentence.

**Mr Winninger:** That's fine. I'm glad to hear you say that. Nor did I say you were misleading the witness, Mr Jackson.

**Ms Raymond:** I'm not misled. I already know how much Ontario collects as opposed to other provinces and it's pathetic, so it's very sad, but I don't go into detail.

**Mr Winninger:** Well, we can deal with the figures as we go along in comparison to other provinces, but I just wanted to reassure you in the meantime that the victim surcharge, even though it flows through consolidated revenue, does go towards very advantageous programs in support of victims and witnesses, and I think that needs to come out.

**Ms Raymond:** Not to be rude to you, sir, but I can guarantee you, if you were a victim of violent crime in the Hamilton-Wentworth area you would be left high and dry in spite of that. You would have people that are so stunned with what's happened to you they don't even know what to say to you. Most people either try to minimize the crime or pretend it just didn't exist and will go away. That's why, though you say there is this one program, it's not enough; there are too many crime victims.

**Mr Winninger:** Okay. I'm interested in who these people are. You mention your employer, and obviously that conduct, subject to whatever the human rights tribunal finds, seems somewhat reprehensible based on what you said. You did say that the police were cooperative and sensitive and respectful of your situation. Were there other people that weren't so cooperative?

**Ms Raymond:** When I had to call for social services trying to get some day care, which I very much wanted, she wanted all sorts of letters, which cost me \$70 per letter to get from my doctor and otherwise, to assess how bad my situation was and how urgent it would be for me to be able to get public day care. She said it was going to take at least two weeks before they can look at it, then they would discuss it, and in another four-and-a-half weeks they would get back to us. I didn't need help in four-and-a-half weeks with my children.

**Mr Winninger:** Did you eventually get your day care assistance?

**Ms Raymond:** No. It's still, I think, being debated

somewhere, but it didn't go much further. It's very disheartening then to be told to wait four-and-a-half weeks when you're having a sort of nervous breakdown right now and when you have a police investigation right now.

**Mr Winninger:** I think I understand. Thank you, Mr Chair.

**Mr Tim Murphy (St George-St David):** I just want to thank you very much for coming and providing us with your report. It was very well done.

I have a couple of questions. One is, you said the police treated you very well. Have you heard or talked to other people who were victims of violent crime and they had the same experience with the police force?

**Ms Raymond:** Not really.

**Mr Murphy:** No?

**Ms Raymond:** I was with the Hamilton Police Force after the Yeo inquest and I think the Yeo inquest had a tremendous impact on the Hamilton-Wentworth—

**Mr Jackson:** A little wake-up call.

**Ms Raymond:** You can say that. I think it changed a lot of their—I don't know 100% certain; that would be for the chief of police.

**Mr Murphy:** Do they have officers they designate for certain kinds of crimes to deal with victims, or—

**Ms Raymond:** I had officers that I don't believe they normally send out for a sex assault. Given the nature and possible link to the Kristen French case, they couldn't just have—they had to take people that they knew would be able to handle the media attention and would be able to advise me appropriately.

**Mr Murphy:** And do you know what training programs the police force has to deal with victims now or in—

**Ms Raymond:** I wouldn't be able to speak about that. I just know from the experience that I got, although I did get the impression that all the officers I dealt with, Sergeant Hrab, his character is a matter of record for the last 20 years and there's never been a complaint. Staff Sergeant Mueller, he's sort of like talking with a reverend of your church. He's hardly a person who—the other sergeants were all of the same calibre that I dealt with.

**Mr Murphy:** Do you have any idea of the total of how much you've lost, how much money you've had to put out? You talked about \$70 per letter for this day care request, and obviously you lost your job. That's a separate and very reprehensible result, but do you know how much it has cost?

**Ms Raymond:** It started off, I guess, subtle. The company decided to dock pay if I had to go down to the police station, and then if I said I had to go to a counselling appointment, it started docking there, and then there were, of course, missed days. I couldn't tell

you in dollars and cents how much it's been, because I didn't keep track. I'm sorry.

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**Mr Murphy:** Okay. Obviously, no one's been charged yet, correct? Have you dealt with the crown attorney's office at all?

**Ms Raymond:** No, I have not.

**Mr Murphy:** Are you familiar with what the crown attorney's office—part of this relates to the earlier question about victim/witness, because that program comes into effect when someone's charged, and you're going to have to start dealing with court procedures.

I'm a lawyer and I've done both defence and prosecution work, so I've seen both perspectives of how victims can be treated in the court system, and I know that there is a lot of work that needs to be done. It depends obviously on the seriousness of the offence, but certainly in the provincial court system I've seen, it's very meatball justice sometimes. People can be dealt with in a way that I would think has to be shocking.

**Ms Raymond:** Well, I've only had to deal with wrongful dismissal but, as an example, when the company finally decided it was going to throw in its last straw, it decided to announce that my assault was a complete fabrication and there was no police investigation and wanted the officers to prove otherwise.

The staff sergeant just laughed, had a few comments that I won't say here, but he just said it's substantiated with evidence and witnesses, and he didn't see where the problem is. So I've had to indirectly start dealing with what lawyers will try to say and do to you to intimidate you into not wanting to cooperate or go further.

**Mr Murphy:** What are the kinds of counselling services you'd like to see available? Let's say you're taken into the police headquarters; obviously the questioning the police do—

**Ms Raymond:** They don't do that in the police station; they come to your home. They're not going to drag you into a police station in that state.

**Mr Murphy:** But subsequent to the initial investigation, what would you like to see? What do you think would have been most helpful right after the police had finished their first initial discussions with you in terms of providing you with help and counselling and services?

**Ms Raymond:** I got most of the counselling from the police. They had one officer there who had been—Staff Sergeant Mueller had been in a severe car accident, and they sent another officer who had also been in a severe car accident. He spent, I guess, a total of 14 hours with me. He did a lot. It did a lot to know that I wasn't the only one who would ask myself why I am even still alive.

**Mr Murphy:** You pointed to one of the articles



here; one of the important things was contact with fellow survivors. Was there a mechanism to allow you to do that at all?

**Ms Raymond:** Not at all. The only way I found Sharon Rosenfeldt again was through the police association. There's an inquiry for the sex assault centre. I was told that I didn't fit within their mandate and should have never gone there and that the police should have known better.

I called then the police association to try to verify that. The police association said there was nothing else there. I guess they didn't know about the program Mr Malkowski had mentioned. They referred me then over to Sharon Rosenfeldt and Victims of Violence, and from Sharon's initiative she has found other victims of violent crime herself and then another lady who writes to me regularly to get an interchange of feeling.

**Mr Murphy:** I know you had some difficulty with the sexual assault centre. Did other people who had dealings with this centre come and talk to you, and were there similar experiences shared by people?

**Ms Raymond:** I never spoke with those who came forward. I only spoke with one other person, and she had tried to apply for a job at the sex assault centre, but because she'd worked in the police station they told her she wouldn't be eligible for employment there. So that would be the only other person I'd spoken to.

**Mr Murphy:** Thank you very much. I think my time has been used up.

**The Chair:** Thank you, Mr Murphy. Ms Raymond, thank you very much for coming and sharing your experiences with us.

**Ms Raymond:** Thank you, sir.

#### MINISTRY OF THE ATTORNEY GENERAL

**The Chair:** Susan Lee. Hello, Susan. The same thing for you: If you'd like people to be asking you some questions, which I always find useful, you might allow for the 15 minutes at the end.

**Ms Susan Lee:** Okay, I will do that. Thank you for asking me to come. I've prepared a presentation; it should take about 15 minutes, and then I'd be pleased to answer some questions.

I'm the provincial coordinator for victim/witness assistance programs in the province, which means I work for the Ministry of the Attorney General in the criminal division and I run the programs that David Winner referred to earlier. There is a program in Hamilton, in fact, and probably the reason this woman didn't know about it is because they didn't want to burden her with that information when there wasn't a charge before the courts.

I'd like to speak to you about the work we have done in my office in an effort to improve the treatment of victims and witnesses in the criminal justice process and I'd like to make a few brief remarks. I divide them into

three parts: The first part will be a description of the work of the office and the staff around the province. This area is the one I have the most direct involvement in and about which I have the most information. I want to speak to you, secondly, about the benefits of the program and the actual needs it meets for victims of crime. The third piece will include some brief remarks about how the program might be improved to provide better and more appropriate assistance to victims.

The work in my office in Toronto and around the province deals with both the delivery of the program for victim/witness assistance in the courts and some policy work to make sure that victims' needs are brought up and kept on the front lines when people are developing new policies in the government. I will describe to you the programs. This is not an exhaustive list but it gives you a fairly good idea of what goes on in the criminal division.

The program for victim/witness assistance in the courts began in 1987 in 10 locations. Since then, we have expanded to two more locations. There are 35 staff people who work around the province. There are four special prosecutions where we provide service; in that group of four special prosecutions we employ five staff.

Because we don't have very many staff people, we've designated our work to serve vulnerable victims' groups. The priority groups are women and children.

The local coordinators work to deliver service in two ways. They provide direct service to victims and witnesses; that is, provision of information about the court process, about the cases in which they are involved. They provide support in court; referrals to local services, if required; and from time to time special assistance—that is, testimonial aids. They provide screens behind which children can testify, amplification microphones, not recording microphones, that kind of thing.

The second big part of their work includes public education and community development. They are expected to participate or develop local groups which improve services to victims in the area in which they work. They also recruit, train and supervise volunteers.

The four special prosecutions in which we're involved include the St John's and the St Joseph's training schools prosecutions, the Grandview Training School For Girls prosecutions and the Prescott prosecutions for child abuse. We provide intensive assistance to these groups of victims to assist them in functioning both during and after the prosecution.

We also provide some child witness projects, to which Mr Winner referred, in both London and Toronto, and we have started this year on a pilot basis a special child abuse court in Toronto, which is a small court with four special prosecutors assigned to it.

A second big part of our work involves crown



training programs in the area of wife assault, sexual assault and child abuse. In Ontario we run a designation system with rotating assignments. Once every year or 18 months, new designations are assigned to existing assistant crown attorneys. The designation obliges the individual to educate their local colleagues as to the special issues involved in the particular kinds of prosecutions. They're to act as a local adviser to their colleagues.

The victim/witness program office operates training programs to assist crown attorneys in understanding the victims' perspectives and also to provide them with recent case law decisions and social science research to make the job of the local expert easier.

The second big area involves policy. We work in diverse areas on policy formulation in relation to victims' issues. Some of these have been raised today. This could range from providing advice on crown attorney directives and guidelines or reviewing and advising next steps for the federal government on C-15 legislation, the amendments to the Criminal Code and the Canada Evidence Act to allow kids better access to the courtroom. We also have been involved in the victim impact statement programs, and some discussion on the fine surtax which has been referred to here. We try to develop and implement the necessary changes to delivery of service for victim and witness programs to better serve vulnerable groups.

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The next section will deal with the benefits of the program. Because the only formal role available to the victim of crime is that of a witness in the prosecution, the system must provide information and other services to ease the burden on the victims and witnesses when they're required to participate in the not-so-friendly criminal justice process. At a minimum, victims and witnesses require information about the process and the case in which they're involved in order to effectively participate. To that end, the victim/witness assistance program provides information about the operation of the system, the victim's role, responsibilities to the system, the availability of local services, available opportunities for making representations to the court, progress of the prosecution, compensation opportunities, restitution and disposition. These are just to name a few of the services provided.

The philosophy upon which the program was based is that the victims/witnesses are special members of the public who deserve respectful treatment and timely information. Even though we don't exist everywhere in the province, I think where we do exist, we do this very successfully. The benefits of the training programs for crown attorneys, I think, relate to the philosophy underlying the designated prosecutors' programs for those three areas I mentioned before. The idea is to equip the system with specially trained people in each

office in the province to assist them in prosecuting these difficult cases and also to provide guidance to their colleagues locally or assigned to these cases.

In my view, by providing frequent training on a rotating basis, eventually we touch every individual in the system and each individual theoretically will have at some point received training in one or all of these areas. That increases the number of staff throughout the province who will be better equipped to handle these cases.

These are tough cases. Among others, these require special training. Training sensitizes the staff to the problems faced by these victims. It's our experience that if victims are better served, the system will benefit from their cooperation and a better result will prevail. By bringing the victims' perspective to the people who are charged with the responsibility of representing the public interest, the result will be that the system will more appropriately represent society's and the victims' interests.

We take great pains to include issues relevant to vulnerability, gender and race in the delivery of service and training for all of our staff. We're very aware of the unique needs of women and children in the criminal justice process, and through our work with victim/witness staff and assistant crowns, we attempt to keep them constantly apprised of the need for vigilance in their treatment of victim/witnesses and the assumptions they bring to the process.

As to the areas of improvement, I have a short list. This is probably the subject of your questions. As a direct result of the victims' demands for more respectful treatment, increased compensation, comprehensive information, legal, medical and emotional support services and funding to meet these demands has increased in the last decade. Victims are receiving a greater number of better-quality services, but the available services are inconsistent, inequitably distributed and underfunded.

Vulnerable victim populations are a priority for resources, but their special needs have not been fully addressed. A wider and more consistent distribution of resources is urgently needed, if only to address the problems faced by most vulnerable groups. There's considerable potential to contribute in a larger way, but due to the lack of staff, the heavy case loads, the responsibilities for program development, community work, among other duties, the work cannot be handled adequately within the resource limits under which we now operate. We're obviously severely restricted by the financial realities of the province.

The government is currently working to develop a comprehensive package of victims' services and policy improvements at this time, but apart from the fact that we operate the victim/witness program in 12 of 54 offices, this is not enough. We will require special

attention to the services necessary to meet the needs of aboriginal victim/witnesses, male sexual assault victims and victims of historical abuse, to name just a few groups.

In concrete terms, I have a couple of things that we could do immediately. We need to develop information books that allow people to participate more effectively in the system, and I've handed out a copy of a book that we prepared to help kids understand what the system is all about. We need books like that to allow adults to better understand how the system works, as well as adolescents.

In respect to training, improvements could be realized through wider availability and increase in frequency. We could give further opportunity to address attitudes, myths governing certain types of behaviours, cultural issues, socioeconomic realities.

In relation to recruitment of crown attorneys or anybody who works in the justice system, we could alter recruiting practices so that victims' interests and attitudes to victims could form a part of the test for employment in this system.

However, with what we currently have, it's my view that we're doing a good job recognizing the diverse and urgent needs of victims and, to the extent possible, we're successful in the work that we do.

**Mr Winninger:** You mentioned the difficult fiscal circumstances we find ourselves in, and you've certainly expanded on considerable areas in which we could have improvement. I understand that under the former Conservative government of Ontario there basically wasn't any money spent on victims' services, and that assistance to victims came under the Liberal government but then there was some weakening of that commitment. Would you agree with me that this government's commitment to support for victims' services is at least equal to that of the former government and that there are areas in which we have actually improved that commitment?

**Ms Lee:** Yes. I would agree with that. Certainly we've made great strides in the last few years in relation to the problems faced by women victims of violent crimes, sexual assault, domestic violence, in terms of the public education that we've done and also the programs we've provided.

**Ms Margaret H. Harrington (Niagara Falls):** Thank you very much for coming before us. I think all of us, no matter what party we're with, would certainly feel that the changes you've described are very worthwhile. I'd like to say that I believe it's part of a bigger process, and that is the process of changing attitudes. Some of the things that were very hidden in our society 20 or 30 years ago are now being confronted and, hopefully, this is really a step forward in enabling people to be more equal in society.

You talk about the children being credible witnesses. This is not a Band-Aid type of solution that we're looking for to the problem of victimization but, hopefully, because the court is dealing with this in an open way, we are actually sending a signal out there for prevention, that these things are taken seriously, they are dealt with correctly and therefore we can look at the prevention angle as well.

My question goes back to some of the comments that were made by the previous witness. In her case, there were no charges laid. The services you described: Are they available to people when there are no charges laid? The other services she mentioned that I feel should be addressed, that we should be looking at, are the day care and the counselling portion of this. Could you answer those two questions?

**Ms Lee:** The services that are provided by my office are offered after a charge is laid.

**Ms Harrington:** So in her case, when there were no charges laid, you cannot be of service to her?

**Ms Lee:** No. Hamilton has the police-based victims' program that would have provided the assistance to her until such time as charges were laid, and then our people would come in and provide assistance.

**Ms Harrington:** I see.

**Ms Lee:** Sorry, I forgot the other question.

**Ms Harrington:** Would you be able to comment about the necessity of the services such as day care and counselling? Do you provide that?

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**Ms Lee:** No, we don't provide day care services. What we try to do is ensure that the victim/witness knows that these are not provided, and unless there's hardship involved we won't become involved in that. But what we try to do is make sure they have enough time to arrange those services.

Counselling: We provide crisis intervention services in our offices. If people require counselling in the community, we try to find them that appropriate counselling. It's not always easily available, but we do try to help them find it and/or make the arrangements for them.

**Mr Murphy:** Thank you very much for coming. I appreciate it, and your candour as well. It was a very fine answer to the question by Mr Winninger.

**Ms Lee:** Thanks.

**Mr Murphy:** A couple of questions. You talked about one potential being a change in recruitment for crown attorneys and others in the system, and I'm wondering what you meant by that, basically.

**Ms Lee:** I think a good example of that is what's going on with the provincial judges right now, in that the interview process is a lot more burdensome on them than it was in the past. They are asked questions about



their community work and their attitudes and that kind of thing. That's what I was referring to: that victims are included in the questions that are asked of the applicant. That was my view, as well. That was my comment about how I thought the system should change.

**Mr Murphy:** I appreciate that. The other thing is that we've just had the whole system dealing with the Askov decision. A lot of charges got thrown out, which creates a lot of crisis for some victims, I think, because they had a real problem understanding what was going on, in some cases, although I think that problem still continues for people, regardless of whether the person's convicted or acquitted, depending, obviously, on the grounds. What does the program do once there is a result in court? Does it follow up subsequently, and what is it?

**Ms Lee:** We sit down with them and provide them with the information they need to understand what the outcome was. What we try to do during the course of our work is make sure that whatever the result, it's not a surprise, if we can do that. We make sure they know what the options are for the judge, so that if the worst happens, they are somehow prepared for this. Then what we try to do after is sit with them and help them understand what that means and provide assistance to getting them on the track back to their own lives in the end.

**Mr Murphy:** I can't recall how long it's been in the code, but one of the things in the code is a compensation order. I think it's 7.10 or something like that. I'm not sure how new that is, but has there been any monitoring by your department about the use of that provision?

**Ms Lee:** There hasn't been any monitoring by my staff about the use of that provision, so I can't really answer that question.

**Mr Murphy:** One of the reform areas you mentioned was compensation in a general sense. What are the kinds of things you'd be looking at? I mean, who would pay? Where would it come from? Would you propose the surcharge going into a designated fund?

**Ms Lee:** What we tell the people with whom we deal is that there is criminal injuries compensation, for instance, and how to get access to that. We also tell them about the level of compensation that may be available to them. We also make sure they know what's available through the Criminal Code in terms of getting restitution or some form of compensation, and then whatever their thoughts are, we make sure the crown attorney has a note of that so the submissions can be made in relation to that person's wishes.

**Mr Murphy:** I'm just wondering what your sense or your department's sense of the cost is. How much it would cost to provide a similar program in the—is it 12 communities where it is now? If you were going to

provide that across the system, what would the cost of that program be?

**Ms Lee:** We've spent about \$2 million now. I'd say probably—

**Mr Jackson:** Per centre?

**Ms Lee:** No, for the 12 sites.

**Mr Murphy:** Total \$2 million?

**Ms Lee:** Yes, and I would say \$5 million to \$7 million, probably \$7 million.

**Mr Murphy:** About \$7 million, and that would provide you with the same level of service as you have now in the 12 communities that have the project?

**Ms Lee:** Yes, in the 54 sites, or at least there would be service in that many sites.

**Mr Murphy:** Then there would be some additional moneys required to expand the services to, for example, aboriginal, male sexual assault victims, historical. Would that—

**Ms Lee:** No, we would provide a minimum level of service as we do now. Yes, you're right; sorry. If we were to enhance the range, yes.

**Mr Murphy:** Thank you, those are my questions.

**Mr Jackson:** I guess if Mr Winninger is going to go back to what the Tories did—I don't want this to become partisan and I hope he would resist an opportunity such as that. I would, though, for the record, indicate that the first system of a bill of rights was brought in by an NDP government in Manitoba. I think they deserve full credit for that, and I think their sensitive programs in court reform for aboriginals are the leading edge in this country. My basic drive and desire is that we get some of that enlightenment in our province. That's about as partisan as I want to go with your comment, Mr Winninger, and I would hope we could work on this.

Ms Lee, thank you for a very balanced presentation, a very good one, actually. Your candour in areas of improvement is refreshingly honest and open, but I'm not here to criticize the victim/witness assistance program. I think it's wonderful. I think it's at its infancy in terms of its ability to impact the rights for victims in improving our justice system as the key component. Seventy-five per cent of all crimes result in convictions because the witness comes forward, and the degree to which witnesses are treated with respect and assisted, without directing them, about which we have to be clear—in our justice system they can't be directed. I'm a big supporter and believer in your program and would just like to see it expanded in the interests of justice.

Having said that, you are also one spoke in the whole wheel of the justice system, and reforms have to occur in front of you and behind you in order that our justice system—I guess our justice system is very much like long-term care is right now. We've put a bunch of



things together over the years and they've worked, but nobody's really brought them together so that they could work more efficiently. Justice and victims' rights are somewhat similar in that regard. I guess you are limited, to a degree, in the amount of impact you can have positively, relative to other jurisdictions in Canada. That's a part of your presentation which you didn't get into, except your issues of inequity, unevenness and underfunding.

But there is the issue, for example, about the degree to which a victim's impact statement impacts in our courts in this jurisdiction, in this province versus other provinces. This is a significant issue. It came up in the Jonathan Yeo inquest, and Priscilla de Villiers is going to come here specifically to talk about that. Had the mandate of Ontario's victim/witness program been such that the impact statement of the woman who was sexually assaulted and raped at gunpoint by Jonathan Yeo found its way, through your offices, to that moment before the justice of the peace when she made the ruling that he was eligible for bail, that he could continue to leave the country, carry a firearm if he so chose and so on—it's very clear that the victim's impact statement and the impact of being a witness to the case was not taken into consideration at all by the crown attorney. We don't expect the other attorney to; I mean, that's his role.

Now I'm getting into an area you would have difficulty commenting about, because these are areas that are the substantive element of reform in how our justice system operates. What kind of feedback are you getting from your field personnel who are assisting in court settings? It's more than hand-holding and demystifying and making a person feel good about having been a victim. It has much more to do with how do they feel safe because they feel empowered; that they're not just being used by the justice system to satisfy the Queen in our justice system, as opposed to bringing the victim fully into the equation.

What kinds of things have you not mentioned that are essential components of reform in our system for victims who are called upon to be witnesses, who can then help not only in convicting the criminal but participating in their own self-empowerment in the justice process?

1640

**Ms Lee:** That's a tough one.

**Mr Jackson:** I know. I'm sorry. But you've been doing so well, Susan.

**Ms Lee:** Thank you.

**Mr Jackson:** I don't doubt you know how to deal with this.

**Ms Lee:** Maybe I could just speak briefly to the victim impact statements. I'm not exactly sure what you're getting at. Victim impact statements, in accord-

ance with what's in the code, are only supposed to be available to the court after a conviction is registered.

**Mr Jackson:** In the sentencing process.

**Ms Lee:** Yes.

**Mr Jackson:** But it has application for bail, early release, parole. It has all sorts of implications.

**Ms Lee:** If it's there, if it's disclosed, yes.

**Mr Jackson:** People need assistance with putting in words their feelings about that individual and what's happening to them, who caused them to suffer, who victimized them. The courts can't write it for them, but the courts have to assist them. I have cases of 12-year-old girls who have been sexually assaulted by a grandfather. A male police officer walked in and put a pencil and paper on the table and said, "Tell me what you had." No one told this 12-year-old girl that that was her victim impact statement. Those kinds of incidents are occurring, and obviously if the police and crown attorneys aren't doing it, there's a role for your office and your personnel in that, just as one example. I could give you a hundred examples.

**Ms Lee:** Absolutely. In fact, we do provide people with assistance in filling out victim impact statements or writing letters, which is essentially the same thing, to talk about how it is that they feel after something like this has happened, what has changed their life. Yes, I think it's important. I think it's important not only for the individual to have an opportunity to do that, but it's important for the individual to know that the officials in the system understand the way they've been hurt.

I agree with you. We use them, we help people put them together in the sense that we explain what they're used for and why they're important. It's a very useful tool to make the system more human.

**Mr Jackson:** Finally, Mr Chairman, if I can, just on that one point, and I realize time is short, this is the double-edged sword, because you're capable of doing all this and you'll do victim impact statements and assist where the law now says those are required and will be helpful to our justice system. There are many jurisdictions nationally and internationally and in continental North America where there are more requirements of that kind of process that you'd be fulfilling. But when we're told that there aren't the funds necessary, that reform cannot occur, because it means not just providing services all across Ontario but that there would be more work for you to do in terms of assisting these victims.

There are the two issues here, and the other is that inquest after inquest, court reform after court reform mentions this key issue of involving the witnesses so that they can have an impact on the justice system. That means more work for your people, a little more training, but more work because your mandate—and it's encoded in our laws that these are available to victims. Then you

would explain it to them and then your assistance would be required on a much larger scale because more opportunities would exist in our court system relative to other jurisdictions.

I think that's the point I wanted to try and pull out from you, because it's not just simply doing what you do now, as far as you could go, and extending it to the rest of the province; there is more that you could do if the laws and our justice system were reformed for you.

**The Chair:** Very good, Cam. Any response, Ms Lee?

**Ms Lee:** I just wanted to say that victim impact statements, having worked with them for many years, are most effective when the victims write them themselves. Just to make that comment.

**The Chair:** Ms Lee, thank you very much for your presentation. It was very helpful.

**Ms Lee:** Thanks.

**The Chair:** We have three items that I'd like to comment on.

First of all, we have the subcommittee report, and I would like to approve it today. I will read it. If there is any objection, we will deal with that perhaps another day because Mr Chiarelli's not here, but I don't think people will object to this. Let me read it.

"Your subcommittee recommends that the subcommittee be authorized to approve expenses to allow

witnesses to travel to Toronto to appear before the committee with respect to the standing order 125 designation on victims of crime."

Any discussion on that? All in favour? Any opposed? That carries.

I wanted to encourage the members to peruse some of the research that has been done. There are quite a number of individual papers here and I urge you to review them.

Thirdly, with respect to tomorrow's proceedings, we are likely to have one presenter tomorrow. We are going to see whether or not Mr Tannis can come or whether he could be moved to another day so that we can have a fuller agenda with more presenters as opposed to having a committee for one person. If Mr Tannis can only come tomorrow, we will meet tomorrow to deal with that presentation.

**Mr Murphy:** I was reading through the fine research by the research officer and I wanted to ask one follow-up question on the question I asked the last witness, and that's the compensation order question. Could I ask the researcher, through you, Mr Chair, to follow up on whether there's any information regarding the use of the compensation order provision of the code relating to assisting victims?

**The Chair:** Okay. We will do that as soon as we can.

The committee adjourned at 1646.





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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 31 May 1993

# Journal des débats (Hansard)

Lundi 31 mai 1993

**Standing committee on  
administration of justice**

Victims of crime

**Comité permanent de  
l'administration de la justice**

Victimes d'actes criminels

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman



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A new coat of arms appears on the cover of Hansard. Presented to the Legislative Assembly of Ontario by the Governor General on 26 April 1993, it emphasizes the distinctive character of the Assembly and distinguishes the Assembly's identity from that of the government. It was created at this time to mark the bicentennial of the First Parliament of Upper Canada and the centennial of the present Legislative Building. Further information may be obtained by calling 416-325-7500.

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 31 May 1993

The committee met at 1534 in committee room 2.

## VICTIMS OF CRIME

Consideration of the designated matter pursuant to standing order 125, relating to victims of crime.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. We have a quorum. I should point out to the members that Trisha St Alban has cancelled out, so the other two people who are here are ready to go.

CANADIANS AGAINST VIOLENCE EVERYWHERE  
ADVOCATING ITS TERMINATION

**The Chair:** I would like to invite Mrs de Villiers and Glenn Roche to come forward. Welcome to this committee.

**Mr Glenn Roche:** Thank you.

**The Chair:** You know that we have 45 minutes for your presentation and you may want to divide your time in order to give members an opportunity to ask you questions later on, so you can begin, either of you.

**Mrs Priscilla de Villiers:** On August 9, 1991, my daughter Nina disappeared. She had been jogging near the fitness club that our family had belonged to for 10 years. Nine days later, her body was found in a creek near Napanee. She had been shot in the head, executed coldly, randomly and calculatedly. Without warning, my family, friends and community were embroiled in the horrors of a brutal murder and the machinery of the criminal justice system in Ontario.

Her murderer was identified as Jonathan Yeo, a man out on bail for the sexual assault of a woman, with two weapons, and uttering death threats. He had attempted to breach bail by leaving Canada and going to Florida, but had been stopped at the border by the US Immigration and Naturalization Service. He was carrying a weapon, the same weapon used in the assault, live ammunition, a suicidal note and his bail release form. Neither Canada Customs, Canada Employment and Immigration, the Niagara Regional Police nor the Hamilton-Wentworth Regional Police felt they had the right to confiscate the gun, his ammunition, nor to arrest him for attempting to breach bail. The rights of the individual to free movement and to possess a weapon, in spite of the charges against him, far outweighed any consideration of the protection of society.

It was apparent to my husband and to me, and to the community at large, that there were serious questions to be asked about the administration of criminal justice in Ontario, although at this point we had no idea of the full enormity of the problem.

As victims, however, once the Halton police had concluded their part of the investigation, we had no contact with any government official, in spite of the extensive media coverage. In fact, the few pronouncements made by the Attorney General's office were published in the Toronto Sun and brought to our attention by a reporter with that newspaper. Those comments about the conduct of the bail hearing were not only inaccurate, but patently untrue. Mr Howard Hampton, then the Attorney General of Ontario, later confirmed these statements on a radio interview and suggested that the federal government makes the laws; Ontario merely enforces them.

It seemed to us at the time that urgent questions needed to be asked, but the doors had clanged shut on Ontario's role in the administration of justice. There was no accountability and no standard of voluntary self-examination or mechanism for the victim or the community to demand explanation. We learned first hand that in the midst of terror, horror and unimaginable grief and pain, the very system that we have supported and paid for as law-abiding taxpayers showed little or no concern for our needs.

As victims, we had no persona, we had no face. Nina's death was sensational at the time, and yet we received little consideration as victims. What consideration, then, can the equally tragic, less publicized cases expect? All the programs, services and vast funding are focused on the defendant. There is little offered to the victim, and the little that is available is haphazard and underfunded.

It was out of this frustration and betrayal that we tabled a petition in the House of Commons, in which we ask, among other things, that crimes of violence against the person be recognized as abhorrent, that agents of the crown be held accountable, and that it be recognized that the rights of the risk to society posed by the early release of a violent offender appears secondary to the rights of the individual.

That petition is still running. We've collected 1.6 million signatures nationally to date and will present it to the next Prime Minister. CAVEAT arose out of the circulation of this petition and the obvious need for a mechanism for the people of Canada to voice their concerns and for victims to demand an equal role in the justice system.

1540

It would seem that a victims' rights bill would be redundant in Ontario. On March 17, 1988, in Saskatoon there was a federal-provincial-territorial agreement on

statement of principles for victims of crime, which would guide the ministers responsible for criminal justice in promoting justice, fair treatment and provision for assistance to victims of crime.

Victims' rights, too, should be covered by the charter, section 7, "Everyone has the right to life, liberty and security of person." It's clear, however, that it's just as necessary to state that victims have a place in the justice system and identify them to give them standing as it was to include section 28, in which women are specifically identified to be given equal standing.

We are told by defence attorneys, who are agents of the court: "You are not, as victims, a party to the justice system. The people, the defendant and the court officers are party to the justice system." In fact, the parole board identifies the victims as observers, not intimates to the process, but on the outside, looking in.

One of the reasons that the victim's role has degenerated to such a point is that the victim has not historically had an advocate to maintain the balance. It's ironic that the defendant, by his actions, chooses the path that leads to the justice system. The victim, without choice, is no less intimately involved and yet is invisible, a forgotten party.

Starting in April 1992, the inquest into the death of Jonathan Yeo, over four months, exhaustively examined many of the facets of the administration of justice in Ontario. Many serious questions were raised, which resulted in 137 recommendations being made which would hopefully improve a seriously flawed system. But it was the parade of witnesses that spanned an 11-year period who painted the most damning picture of just how inimical victims find the system at every level.

The result is that those more vulnerable members of society, who most need the protection of the state, are terrified of the interrogation and the humiliation which the process involves, and therefore do not lay charges. The overwhelming impression was that the justice system favours the interests of the accused at the expense of society. An even more sinister result of this reluctance to lay charges was that an extremely dangerous man went undetected for 11 years, while his level of violence escalated.

The jury in the Yeo inquest recommended a charter of rights for victims after hearing the victims' testimony—see my enclosure. It is in the victims' assistance and criminal injuries compensation that the victim's plight is clearly seen.

The balance of our presentation, focusing on services and programs for victims, will be delivered by Glenn Roche. Glenn is a director of CAVEAT and a victim whose sister was murdered in March 1990, also by a long-term, violent offender out on bail at the time.

**Mr Roche:** Thank you. My sister Ann was killed by David Faulds, a man with a long record of violent

offences against society, a man who had been a patient at the institute for the psychiatric or criminally insane in Saskatchewan, who was at this time released on bail.

It was a tragedy our family felt could have been avoided. It is also after that when we found out where our difficulties were just beginning, and this was in the issue of programs and assistance available to victims of crime. In my experience, after the murder of my sister in March 1990, these programs have been ineffective, extremely difficult to access or non-existent.

This began with notification of the homicide. I was contacted by phone at work by the Niagara Regional Police and told my sister had been strangled and assaulted. This was the first and only contact I had from the justice system until the crown contacted me regarding a plea bargain they were about to accept. Although a victim services program was operating in Peel, where my sister was killed, I never was contacted. Unlike the offender, no police or crown agent gave me any information or advised me of any rights or services available to me.

I applied to the Criminal Injuries Compensation Board on behalf of my sister's two children, aged five and six at the time. I was strongly discouraged from pursuing this application, both by phone and letter, and I have an attachment to that. Recognizing I would have a difficult task, I investigated legal aid to help present our case by hiring a lawyer. Although the offender had two lawyers representing him from legal aid, we, the victims, were denied that right.

The agency established by government to assist victims, the criminal injuries board, has, to the contrary, been a source of aggravation to victims because of its methods. This can be supported by using my case as an example, as the following facts are not an anomaly to us but standard practice by the board.

Victims must wait approximately one and a half years to be advised of a hearing date. Following the hearing, there is another four-month wait to be advised of the decision; 10 weeks after being advised of the fact that they have made a decision, you will be told what it is and awarded compensation, if that is what the decision provided. These time lines produce economic and emotional hardship in victims by keeping the trauma in front of them for two years.

I also discovered that the minister responsible, the Honourable Marion Boyd, is not at all aware of this situation, as illustrated in her letter attached. Note she expects a decision in April from my hearing in March. Would that it were true.

The board's guidelines for compensation also contribute to revictimization. They do not award compensation by the type of crime but by the nature of the injury. In our case, we were denied compensation for pain and suffering because we did not prove, to quote from their



letter, "suffering which would be beyond the normal in the death of a loved one." Proof is evidenced by the written report of a professional counsellor. To anyone but the board, this test, in its insensitivity and even inhumanity to families of homicide victims, is shameful to both the government which allows it and the board that enforces it.

Finally, the issue of economic loss to families in a homicide: We, like so many others, were denied compensation for economic loss because my sister was a student at the time of her death. No pay, no worth, was the attitude of the board, as attached. It does not seem possible that this test could survive in this day of women's issues and the emphasis this government has adopted to bring equity to women. It is a glaring incongruity that the Honourable Marion Boyd has both the responsibility for women's issues and this board guideline for compensation. Statistics Canada has been able to assess the value of a homemaker. Why can't the board?

As a last note, the Ombudsman saw nothing wrong with the board's guidelines or legal aid's refusal and declined to help. I was only successful in furthering my case by going to the media.

In response to my letter, on April 26 this year Mrs Calder, the chair of the board, put a "rush" on my decision. It will now be June tomorrow and I am still waiting.

Conclusion? As victims, what we really are requesting is simple justice in the form of parity with the offender in the legal system. We expect nothing more and should not have to accept anything less.

**Mrs de Villiers:** It is often critical for the safety of a victim of violent crime to be informed whenever the defendant is not in secure custody. It is, however, a hollow right if it is not made readily understandable and available to the victim. Throughout the Yeo inquest, the Stephenson inquest, the Conter inquest and the recent federal-provincial crime prevention meeting, lack of communication has been cited at every level.

1550

The rights and procedures open to victims must be described in simple, understandable terms in the major languages, with a designated source that will supply this information. In 1992, the Supreme Court redressed the empty right of the offender to have a lawyer if he did not know how to get one.

In 1992 the Supreme Court redressed the empty right of the offender to have a lawyer if he did not know how to get one. It was clearly stated that the police are obliged to supply the necessary phone number and that there has to be a duty counsel available. Victims' rights should be just as clear.

Communication is all that is needed in the laying of charges. Victims have never been consulted on this, nor

would it be correct for the victim to be involved. However, the victim's right to be advised of the charges should be documented. Victims should also be told about the court process. In some jurisdictions this is in place, but again on a sporadic basis. There's a need for clearly defined standards. The victim should have a contact person who will follow the process. In South Carolina, there's a move to appoint a facilitator to the victims of violent crime to guide them through the process as the defence lawyer does for his client.

It's apparent that the services offered to victims are not uniform across the province, nor is there any apparent control or organization of overlapping services. It seems that in the midst of an economic recession, we could streamline the services available and apply the revenue saved elsewhere. In the Yeo inquest, the need was identified for a 1-800 number which could act as an information centre for the policeman in a small force in need of expert advice or for the victims who regularly phone CAVEAT in desperate need of professional help.

There are also valuable data banks, studies and programs which should be made available to utilize other experience and ideas. This too could be part of the centralized information service.

It is naïve to think that in this economic climate, additional funding will be afforded to victims. In the Police Services Act, victims' rights are affirmed, but although approximately \$5.8 million was dedicated to undue use of force and employment equity described in the act, no money was voted for victims' rights. In fact, Hamilton-Wentworth Victims' Services lost their funding last year.

Apart from streamlining existing programs, additional revenue could be saved in legal aid if we could curtail the number of frivolous lawsuits brought by inmates challenging the charter. This could be accomplished by establishing a program of user fees proportionate to their income. A prime example of this abuse of the system is Clifford Olsen, who has brought up to 23 suits against the government to date.

Of course the most obvious source of revenue is the surcharge for crime victims. It's obviously not being uniformly applied in Ontario. If it were levied uniformly in all courts and applied to a victims' fund, then the judges and the public alike would have more confidence in the system and there would be accountability as to its application. It would also fit in with the current thinking on alternative methods of sentencing.

The needs of the victim of sexual assault seem to be more widely understood now. However, this too is dependent on the jurisdiction. We have been encouraged by the response by police forces in our area after the recommendations of the inquest into the death of Jonathan Yeo. The inquest pointed out the need for standards to be set at all levels so that there is a more uniform approach across the province. The level of

sensitivity would hopefully improve and increase confidence in the system. Expectations of the victim and the public too would be more realistic.

We conclude with a quote from the foreword of the British Charter of Rights for Victims of Crime, 1990:

"In the past, the victim of crime has been described as the forgotten woman or man of the criminal justice system. This verdict was unfair—those working in and with the system have always tried to help the victim. What the charter does, however, for the first time is to set out legitimate rights and expectations. This will be a major advance in giving sympathy for victims more practical expression, and in making sure that victims are treated in the same way in whichever part of the country they suffer from crime."

Can Ontario do less?

**Mr Roche:** Our recommendations:

(1) A victim assistance package or information line should be provided by the police in the case of violent crime.

(2) Legal counsel should be provided to victims, or the information on its availability, like the lawyer referral service currently set up in Ontario.

(3) The Criminal Injuries Compensation Board should revise its guidelines for compensation. Note the attached, civil court guidelines versus criminal injuries board. Its time lines for notification and hearings should also be revised. Possibly there should be a priority basis according to the type of crime. Note: These guidelines that this board now uses are not legislated but arbitrarily adopted by the board.

(4) It is now accepted as fact in court that sexual abuse and assault cause serious harm to victims. It should also be accepted by the criminal injuries board as fact that homicide causes serious harm to families.

(5) There should be a study done on the efficacy of the Ombudsman's office, and funding should be diverted from here to victims' assistance if the results so warrant.

(6) Where the will of the people is not reflected in the interpretation or the changes in law imposed by judges, then section 33 of the charter should be invoked to preserve the law as supported by the people. This would allow a review of the law as prescribed by the court, but with the Legislature, not the judges, being the final lawmaker.

(7) We need a mechanism for independent evaluation of agents of the crown and their departments. There should be clearly defined responsibility and accountability in the administration of justice.

(8) The accountability of the parole board to victims and to the public could be accomplished by the expansion of the appeal process for parole decisions to include victims and the public, not just the offender.

(9) A charter of rights should be established for victims of crime.

(10) The victim should be informed whenever the offender is not in secure custody, for their personal safety.

(11) Rights and procedures of the courts should be described in simple understandable terms in the major languages, with a designated source to supply this information.

(12) There should be clearly defined standards of communication and services to victims which apply to the entire province.

(13) The communication between departments of justice and mental health institutions, federally, provincially and regionally, should be a priority.

(14) Protection of society should be the paramount factor in every decision made or action taken by the justice system and its agents.

**The Chair:** Thank you both.

**Mr Cameron Jackson (Burlington South):** Glenn, Priscilla, thank you very much for a very thoughtful presentation and one which only covered, I know, about a third of the areas you would have liked to have covered, but for the interests of time.

At the outset, let me say that when we put forward those persons we would like to hear from, we indicated we wanted to try to give you 45 minutes—and some are given only 20 minutes—out of respect for the kind of work that you've been doing and also to provide enough time for the committee to get into some in-depth questions, in particular, Priscilla, around the Jonathan Yeo inquest. Those who were unfamiliar with the system in Ontario were very shocked to learn that bail was granted so quickly and so easily and without an advocate for the victim, who did survive, thank God, Jonathan Yeo's attack and threats on her life.

Priscilla, perhaps you might share with the committee some of the areas within the inquest beyond recommendation 128, I believe it is, which clearly indicates that a victims' bill of rights should occur in Ontario as it has occurred in nine other provinces in Canada and, as you've indicated in your brief, was first established federally as a guideline. The first province was Manitoba, but we're one of the last two provinces not to have one. Would you like to highlight some of the additional areas of reform? Or we could just talk about victim's impact statement on bail, if we wanted to focus in that area.

**Mrs de Villiers:** I was just thinking of where we should start, quite honestly. To give you a little bit of background, the inquest went right back to Jonathan Yeo's childhood and started focusing, for about five weeks, on a series of young women who'd been attacked over the years by him in various ways.



As each young woman took the stand and the court saw her shaking and crying and having to be taken out and revived, some of them 11 years after the event, a very senior member of the Ontario Attorney General's office, who is a criminal lawyer, said to me, "This has been a revelation." It was the best and worst exposure of how the victim has been—I hate the word "revictimization," because it diminishes what has happened to people who really feel that the system is not open to them.

1600

One young woman, who was 17 when she was attacked by Jonathan Yeo, had seen her mother take her stepfather to court in an effort to deal with an abusive relationship, and she'd been so badly treated in court that this young woman had never disclosed until she saw my daughter's picture in the newspaper. She felt personally responsible because she had not disclosed what had happened to her 11 years ago.

She was told that she needed help. She said how would she find this help? We offered her various solutions and she was one of the girls who came up with this idea that if there were a recognizable source for victims, such as a 1-800 number, like 911 or something, where you could phone and be sure that you could get the sort of help you need or advice that you need or counselling that you need at the time, this would be a help.

One young woman very bravely tried her best to lay charges. She was actually Sheila Yeo's best friend; she had been her friend since grade-school days. Jonathan Yeo broke into her house, held a knife to her throat when she was sleeping, cut her telephone cord and she eventually ran out of the house in terror. When the police came, he was playing with toys and splashing in the pond and pretending to be unbalanced. She decided that she had to first of all warn Sheila and then lay charges.

First of all, she was threatened by Sheila that she would in fact go to the authorities and say that this girl had been dealing drugs, to prevent her from laying charges. That was the first thing. The next thing that happened, she actually went with her father, took a day off work, went down to the crown attorney's office in St Catharines, spent a whole day trying to lay charges and was talked out of it by the crown. So here we had one young woman who was prepared to pursue it. She and her father both lost a day's salary at Dofasco and yet they were not encouraged to do it.

We had the most dreadful account of Sheila Yeo's cousin, whom Jonathan Yeo one morning tied up and raped. This girl was taken to McMaster University hospital and the sexual assault centre was called in. She was fed a mine of misinformation and it affected her to such an extent that she could not have laid charges after that. The family then, to mitigate it against her—she

was not at any point at that stage offered recourse to the police or a chance to think it over; in fact she was just fed misinformation. Some counsellors are excellent; some are not. This became more and more apparent as the expert witness continued. There are very, very sporadic and uncontrolled services offered.

I've just heard about a 12-year-old girl who had an excellent experience in the same hospital. She was raped, but she received such excellent care from the police onwards that she has successfully laid charges and in fact a conviction has been obtained. The difference between the two was enormous. This is why I feel we have to look very seriously at that.

One thing that was absolutely apparent throughout the entire four months I sat in the courtroom was this question of honest bewilderment on the part of the officials in the various levels of the department of the justice system. The police really felt that it was more than their jobs were worth to arrest Jonathan Yeo. It was unfortunate that they didn't know about section 524 of the Criminal Code, which in fact gave them the right to arrest, and it's also unfortunate because it was a question in the detectives' training paper at the police college.

However, there was an honest bewilderment. The Canada Customs and Immigration officers—I know that's not provincial—also expressed this idea that Jonathan Yeo had not left Canada and therefore he was still a Canadian citizen and had the right to move around freely and there was no reason for them to seize his gun, even though he had live ammunition and he was out for violent assault. There was this honest expression of the rights of the individual.

In fact, the US immigration officer was the most effective of all. He did everything he could to persuade them to at least separate Yeo from his gun. He said, "This is a very dangerous man." When Jonathan Yeo turned and went back across the bridge, Canada immigration and customs cleared the bridge. They all went into the customs house. When the immigration officer was asked why he stood eight feet back from the car and waved Yeo back into Canada and put his officers in the office, he said, "Because I was frightened for their safety." But he could not offer, when he was asked, any reason why he was not frightened for the safety of Canada.

I thought about this long and hard. I thought, "How have we got to the stage where the rest of society"—and we've paid very dearly for an extremely expensive and unwieldy justice system, federally and provincially; we in Canada believe in law and order and justice and in not carrying a gun to protect yourself—"how have we got to the stage that the security of the vulnerable members of our society is of so little account?"

I decided that it's because the other person in the court, the other party in the court, has been forgotten.

This idea of the might of the state going against one helpless individual has grown to such proportions and there's such a horror of possibly detaining one person unnecessarily that the victims and the potential victims have been forgotten.

It appears absolutely clear to me that it is time that we document the fact that there is such a person as a victim and that we delineate their rights and freedoms and we delineate their place in the process. Hopefully, in doing that we will establish this balance of rights again, because every person in this room, believe me, is a potential victim. We have become forgotten in this system, in our zeal for compassion to the underdog. Not that for one minute I would like to go back to the old ways of locking people up and throwing away the key, not at all, but we have to re-establish that balance. The only way I see it is by creating this persona.

**Mr Jackson:** Mr Chairman, I realize that time is of the essence here. I will yield, but I am willing to yield some of my time that is allocated to me for my presentation after the other members of the committee have finished with their questioning.

**The Chair:** Let's see how it goes, then.

**Mr David Winner (London South):** Just briefly, I'd like to thank both of you for coming here today and sharing your experience with the committee. While some of the initiatives that have been taken under other provincial victims' bills of rights exist in Ontario, there's clearly much work to be done.

I just wanted to add that there was reference made to a letter signed by the Attorney General being attached to your presentation. I haven't found it yet.

**Mr Roche:** No, I'm still looking for it too. When I get it, I'm going to send it in.

1610

**Mr Tim Murphy (St George-St David):** I too want to thank you very much for the kind and thoughtful presentation. I have to say that I agree with your central thesis that victims are often ignored in the process. I, in my life prior to politics, was a lawyer and acted both as defence counsel and, occasionally, as an acting crown attorney. I must say that it was very often my experience in the system, in both branches of the criminal justice system, that the victim was the last person thought of. I think the direction that we're heading in and even these hearings themselves are part of the process of building up a recognition that we have to pay attention to the victim in the system.

I wanted to focus on a couple of things that you mention in your brief. You said that your organization, CAVEAT, has received a number of calls from victims. I wonder if you'd just briefly outline for us—without identifying individuals, obviously—some of the kinds of things and the concerns that were expressed and what

they were looking for and the needs that you see arising out of the calls you've received.

**Mrs de Villiers:** It started within three days of my daughter disappearing. I have received a large number of calls of people in desperate need of psychiatric help. Psychiatric services are woefully lacking, and in victims of violent crime, particularly where there's homicide involved, it's a very specialized area, I gather. We in CAVEAT don't for one minute pretend to be counselors. All we can do is pull in our resources and try to find information, try to find a place to put these people. When they phone they're in desperate straits. That's the first thing.

We have more and more people who have been embroiled in the justice system, and it's a double bereavement for people because on the first hand you've been terribly hurt by something outside your control. Comparisons are odious, but the community around me is still so wonderful to me and the incredibly cold lack of interest that was shown by everybody involved in the justice system by contrast is just odious.

You have people deeply hurt who are in desperate need of just speaking to a lawyer, and very often it's a misunderstanding or they have unrealistic expectations or they genuinely need to go on to another step. But most of these people do not have the resources, and this is something I discovered at first hand in the inquest, and another day and another time I'll tell you all the financial woes involved in getting legal help. These are very often parents, as I was—or a brother or a sister—who are not primary victims but who also have a bearing on the system. Then we have people who need social service and people who are desperately in need of money, and they need it immediately. There's a wide range.

**Mr Murphy:** I'm wondering, if I could follow up, you mentioned in the brief a lawyer referral service as a kind of thing. I was and I think, Glenn, you did—

**Mr Roche:** Yes.

**Mr Murphy:** When I participated in that service, there was no, if I recall, victims' advice part of it. I'm wondering if you talked to the law society—I believe it's the law society's program—

**Mr Roche:** Yes, it is.

**Mr Murphy:** —on whether it has given any thought to expanding the referral service to include something like that, because I believe the obligation is to provide 30 minutes of free advice.

**Mr Roche:** Yes. We haven't specifically asked them about whether they're able or willing to expand it to victims. However, on their side they haven't denied the service to victims. It's available to them if they're aware of it, but they have to be aware of it on their own, and they aren't. There is no way for them to be. It is something that, as we said there, if it was included



in an information package, possibly victims might be more encouraged to take advantage of that system.

**Mr Murphy:** You also propose some sort of independent evaluation process for agents of the crown and other departments. I assume that's everything from police to crown attorneys and others in the system. I'm wondering how you view that mechanism being set up and how that accountability would work. Have you thought it through further?

**Mrs de Villiers:** One thing that's occurred to me is that we in Ontario are extremely fortunate to have a couple of really big inquests. I think we're one of the few provinces that does. It really examines the system in depth. However, I'm sure that there are many cases where things need to be looked at on a smaller scale than, say, the Stephenson and the Conter and the Yeo inquests. It seems to me much the same as when there's an airplane accident they immediately send in a team, not in a way so that heads will roll, but merely to examine the system and see what went wrong.

One of the most frustrating things for me has been the lack of self-examination. It may have gone on behind closed doors, but I suggest society really needs to know about it if we are to regain our trust in the administration of justice. So I would see it as some sort of team, possibly; maybe a tragic events team—not on a huge scale.

**The Chair:** Mr Jackson, I'd like to give you an opportunity to ask a question—or two, if we have time.

**Mr Jackson:** Thank you, Mr Chairman.

I appreciate your focusing directly on counselling. That issue is what first compelled me to start investigating the need for a victims' bill of rights as it affects women and violent crimes and crimes against women. That was really the genesis of the document which I've presented to the Legislature three times in the last four and a half years.

Like you, I have received many telephone calls from citizens of Burlington, and the one brief story which I'll share with you is of a family—this is multiple-incest case, and the family contacted me because they'd read in the Burlington Spectator about the first time I presented the bill.

Essentially, the daughter and the two granddaughters had been sexually assaulted, and finally they had brought the grandfather/father to court in a jurisdiction in Ontario but far from Burlington. One of the conditions was his release on bail, and the plea from the family was for him not to come to Burlington, which he immediately did upon his granting of bail.

Counselling was not made available to any of the three victims, until finally it was given to one. The mother told me—first the husband had to call to ask questions. He said, "In 20 minutes with you on the phone, I've gotten more in 20 minutes on the phone

than I've received in two years fighting this in the courts." The crown attorney hung up on the family when they requested—and I notified then-Attorney General Ian Scott, who, to his credit, pursued it quite vigorously—but the crown attorney hung up on the victim and wouldn't even listen to her plea not to release the family member to their community.

The one daughter attempted suicide twice. The other daughter attempted it once. The mother had to go off of counselling to put the second daughter—it was her third attempt at suicide, and that's how they got her her counselling. There is a woeful lack of services in this area in this province, and it is predominantly affecting women, who are the primary persons needing this kind of service.

Finally, if I can just ask you to respond to the issue which your husband and you first contacted me about, which was: Why would Jonathan Yeo be allowed out on bail and not be caught at the border with a gun? I explained to you about this sort of Chinese menu that they use in our court system for bail. It's really rather offensive, in that the court only spends two or three minutes in a bail hearing going through the first two or three items, but to not use drugs or to not carry a weapon or to stay in the country, to surrender one's passport—they are numbers 23 and 24 in this checkoff. The victims of sexual assault, of cases I've heard from, people have said that the judges and the crown attorneys and the defence attorneys, who don't allow victims' impact statements or allow the victim a standing in that situation, only get to the first two or three, which is to stay a certain distance away from person X, Y or Z. Clearly, had the crown put the effort or the attention into it, someone with a gun who used the gun to attack the first woman who was assaulted, would immediately have been incarcerated for breaching the terms of his bail.

I know the inquest spent some time in that area, and that is one that has obviously caused you much stress and concern, but could you just share with the committee briefly your concerns about the lack of standing for victims' impact statements in early bail where there's been even a conviction, or early bail on a charge has been laid for cases of violence, when threats of death and a weapon are used, and yet they are out on the street almost immediately?

**Mrs de Villiers:** The first thing is that I have to say that I really feel that where a victim would feel more comfortable, the victim should take the stand and should be encouraged to do so. I know all the legal arguments against this. However, we are dealing with a victim who's done extremely well because she had supportive prosecutors, supportive police and she confronted her attacker. She was brutally raped within an inch of her life and he was charged and convicted. It was extremely



cathartic for everybody, and she was quite sure that the story, as she meant it to be told, came out in court.

1620

What is overlooked so often with victims' impact statements is that a large percentage, for example, of inmates in federal penitentiaries, particularly I think in provincial penitentiaries as well, have about a grade 5 level of education. Very often, the victims are of a similar level. They do not write well. It's extremely difficult for them to express what has happened to them. Very often this goes against them and they are reluctant.

Secondly, in the case of the young woman who was assaulted, that finally Jonathan Yeo was charged for, she was a very literate, articulate young woman, but because of terrible mishandling by the police, incredible insensitivity shown to her by the police, she took over a month to fine-tune her victim's impact statement because she didn't want one syllable to be misread, misinterpreted. Finally, it went into the docket and it was never referred to in the sentence, so that having spent a month or five weeks refining the statement and getting it done, every nuance of what had happened—she had endured eight hours of assault by that man. He held a gun 18 inches from her head for eight hours and he assaulted her and he made her assume pornographic poses. She talked him out of killing her for eight hours and she spent five weeks writing the statement and it was not read out at the bail hearing.

You look at this and you say, "Why do I bother?" There is not an established procedure and the reason there isn't an established procedure is because the victim has no persona.

**Mr Jackson:** Has no rights.

**Mrs de Villiers:** There is no place for the victim in the courts. There are no rights delineated.

**The Chair:** Mr Jackson, we've allowed for some flexibility.

**Mr Jackson:** Thank you, Mr Chairman.

**The Chair:** Mr Winninger, I'd like to give you another opportunity to ask one question, given that you hadn't asked one before.

**Mr Winninger:** Yes, that's quite correct, Mr Chair. I was just a little concerned when Mr Jackson used the phrase "woeful lack of resources for incest victims in Ontario." I think, for the record, the people need to be reminded that there is a set of guidelines for assistance in multiple victim-perpetrator cases being developed for use in all the crown offices, and as the witnesses probably well know, there are crown attorneys in each of the crown offices across Ontario who are especially trained in dealing with child abuse cases and with sexual assault cases.

Furthermore, in the area of sexual assault and assisting victims of crime, in addition to the victim/witness assistance program, we also have the sexual assault

coordinator program, the designated domestic assault coordinator program, the designated child abuse coordinator program and emergency legal advice for victims of domestic assault. These programs are quite costly, but certainly well warranted.

**The Chair:** Mrs de Villiers, do you want to comment on that statement?

**Mrs de Villiers:** I can't comment specifically on it, but I have to say that a number of these programs seem to have blown up in Hamilton. I'm not sure quite what has happened there. One minute they're there and the next minute they're gone.

I'm sure there are a lot of programs, and that's what we find: We don't know where to find them. I'm reasonably educated and I spend my day doing this. We have to simplify the system so that when we need it we can find it.

One thing about victims is that you need help at different times. Most of the assistance is handed out to you right at the time of a crime or at the time of a court case. It may be that you need help a month down the road and you have no contact person. I would just say that if you could have a really simplified access, I think that would make a world of difference.

**The Chair:** Thank you. Mr Murphy, one last question.

**Mr Murphy:** I just want to follow up on the bail hearings. I'm wondering whether your proposal is to have the victim come to the bail hearing and give evidence or just to have a read-in of a victim impact statement, I assume, by the crown at that point.

**Mrs de Villiers:** Yes, I've thought that—the bail hearing certainly, as long as it is established, and it is certainly now in our region. The Yeo inquest has changed things a lot in our region. I'm not so sure about other regions. But the victim's impact statement has to be read into the—

**Mr Roche:** Or that they have the option.

**Mrs de Villiers:** Or that they have the option to go to court if they really would prefer it, understanding that people often aren't comfortable with what—

**Mr Murphy:** Yes, that was the reason I asked, because if you're going to have the victim testify, it is going to be subject to cross-examination at the bail hearing stage. That's where I think I would personally be more in favour of a statement as opposed to the appearance because that would at least give the victim some protection.

**Mrs de Villiers:** One of the suggestions we actually made to the police officers in court was that they in fact have a tape recorder and allow the victim to speak into the tape recorder if they really find it very difficult to write the statement down, and that is something else.

**The Chair:** Mrs de Villiers and Mr Roche, we

empathize very sincerely with the suffering you have lived through and probably continue to live with and we want to thank you for coming today to make your presentation.

**Mr Jackson:** Mr Chairman, might I submit a copy of the Yeo inquest for members of the committee, if they would like to scan through some of the 130 recommendations made?

**The Chair:** Sure.

**Mr Jackson:** I'll supply that to the clerk then.

#### LONDON FAMILY COURT CLINIC

**The Chair:** Louise Sas and Alison Hatch Cunningham, welcome to the committee. We have a half an hour, so you may want to gauge the sense of what you want to say and how much time you want to leave to the committee members for questions. You can begin any time you're ready.

**Ms Louise Sas:** I'd like to begin by introducing myself and Alison Hatch. I am a clinical psychologist at the London Family Court Clinic. I have been there for approximately 15 years. Alison Hatch is a criminologist and is involved in the research in the child witness area at the family court clinic.

We've come today with a brief which I believe you now have in your hands. What I'll try to do in the next 15 minutes or so is summarize or highlight some aspects of the brief that we'd like to present to you and then entertain some questions after that.

What I should mention before I begin is that most of what we will be discussing relates to child victims of crime as opposed to adults, although I'm sure that many of the comments we will make will be applicable to adults as well.

Having said that, I'll begin by just introducing a little bit of information about our mandate at the family court clinic. The family court clinic is a children's mental health centre and is committed to advocate for the special needs of children and families who come before the courts.

In 1987, the clinic received funding under the sexual abuse initiatives program of Health and Welfare for a three-year demonstration project on issues relating to child witness court preparation; that is, preparing young children who have to testify in criminal court in respect of their own victimizations. At the time, the goal of this child witness project was to prepare child witnesses for court and to try and reduce the amount of trauma that they experience as a part of being in that process.

Since Bill C-15 came into effect in 1988, we have provided court preparation services to nearly 400 children who have come through in the London and Middlesex area. We have also tracked another 100 children who did not come through for services but were certainly dealt with in our area as well. It's with this knowledge of approximately 500 children that we

come to you today with some concerns and also some recommendations on how children should be treated within the justice system to prevent further traumatization.

#### 1630

A little bit of information about who it is we see: Approximately half of the children who come to us have been victimized within their family situation; that is, either someone within the nuclear family or the extended family—a relative of theirs—has perpetrated a crime against them.

The majority of the children we see have been sexually abused, and it's interesting, because the court system I think historically has had difficulty dealing with crime that has been perpetrated within a family system. Added to that is the difficulty that courts have in dealing with the whole crime of sexual abuse, especially that of young children.

Added to that is the fact that with the children who are coming to the courtrooms, historically I think our court systems have been very uncomfortable with receiving testimony from children. There's been a long history of concern around the credibility of children, their ability to tell what has happened to them in their lives and whether or not they are indeed even truthful or able to separate fact and fiction. Many of the cases that we deal with we feel present several challenges on different levels for the court system to deal with. As well, the majority of people we see—the children—are female and about 78% of the victims are indeed young girls.

As I mentioned previously, the majority of the children who are abused in an intrafamilial way are abused by someone who is related to them by blood; that is, 27%. The concern that we want to express is that it is very difficult for young children to enter a courtroom arena, not only to tell about an abusive experience that has occurred, sometimes very traumatic, but also to deal with the ambivalent feelings, the fact that they are related to that person.

The other fact is that most of the abuse occurs typically in the child's own home, which is supposed to be a place of safety and a haven, and unfortunately, if it is not occurring in their own homes, then it's occurring in the abuser's home and at times, when it's a familial relationship that's involved, it's often a home that they're supposed to feel safe in as well.

In our cases, we found that the majority of the children were expected to testify. They were the only victim in the crime. There was no corroborating evidence. There was no material evidence, no physical evidence, and so the child was essentially the pivot or crux of the case itself, the expectation of course being that they would come into the courtroom, be able to tell their story and justice would be served.



Interestingly, we've been tracking how cases have been handled in our area over the last few years and we've noted that there has been a significant increase in the number of guilty pleas in our area. In fact, it's gone from 39% to 62% and we believe strongly that the reason this has occurred is because we have a very coordinated approach in our community, and there's a very strong child witness program in our community that prepares children. I believe that counsel in our area know that. As a result, we've had many more guilty pleas than before. However, there is still a large number of children as young as age 5 on our case loads who are coming into our courtrooms and testifying and this is the thing that we want to talk to you about today.

I know as a parent of four young children myself that I would be very concerned if one of my children were sexually assaulted, or physically assaulted for that matter, and that had to testify in court, given what I've seen over the last five years.

In March 1993, the child witness project made a brief to the parliamentary committee that's reviewing Bill C-15 and Bill C-126, and I think essentially what we tried to do was conclude that overall the new amendments to Bill C-15 and Bill C-126 have really enhanced the ability of a child to enter the courtroom and tell their story.

I think the reforms have helped because they've expanded and opened the net a little bit wider by creating some new offences that better capture what happens to children. There have also been some modifications to evidentiary requirements, that now for children under the age of 14, who are unable to swear an oath in court, and where there is no corroboration, at least the doors are open and the trier of fact, being the judge, can assess the child's comments about what had happened. At least they get in the door.

However, we still feel that there are a number of areas, in particular in the reception of children's evidence and how children are treated in the courtroom, that make it a very traumatic experience in areas that we need to still work on, in particular in the area of implementation. It's my understanding that the implementation of the legislation is really under the purview of the provinces, and so it's with this in mind that we'd like to do two things. One is to mention some of the recommendations that we made to the other parliamentary committee and then add into it the recommendations today vis-à-vis the bill of rights and certain implementation of legislation to ensure that children are protected.

Overall, there were three thrusts to the recommendations we made to the legislative committee. One was to codify techniques that we know help children testify—and I'll go into details in a moment—to make it available routinely in all cases and to reduce the number of times that children have to tell their story in the

courtroom, because there's enough literature and enough research done by ourselves and others to say that it is difficult and it's stressful and it causes damage.

The first recommendation—and again, I'll just highlight a few—relates to the option of testifying behind a screen or on closed-circuit TV in another room. We strongly suggested that this should be a mechanism or a provision that should be extended to all child complainants of sexual abuse, physical abuse or if they've witnessed violence, and not only to children under a certain age and in certain conditions. At the present time, the issue is that it's a very difficult procedure to obtain, in that the crown attorney must apply and prove that the child cannot give a full and candid account without the benefit of the screen or the closed-circuit TV.

We suggested strongly that expedited hearings when children are witnesses should be mandatory. We have been doing a follow-up study of about 75 children over a four-year period of time, and one of the comments that has been made most routinely by the children is it takes too long; matters take too long. We have some children as young as age 5 or 6 who have been abused perhaps a year or a year and a half prior to coming through to the project. It took a long time to disclose, and then matters can take up to a year or a year and a half in the child's life. As a result, they live in limbo. They find they can't go on and function in their school and in their home and in their community. For children, sometimes it encompasses up to a third of their lifetime, trying to get through the court process.

So we feel very strongly that expediting these hearings is something that we can do on a provincial level, and directives can be given out to crown attorneys' offices around the province that when it is a sexual assault of a young child or physical assault or any kind of matter where a child is expected to testify, that it be expedited.

We also suggested that child witnesses should at least be permitted to have neutral persons accompany them as support people to the stand. Most often, parents are subpoenaed as well, and as you know, when a person is subpoenaed, they are not permitted, unless they've given their own testimony, to be in the courtroom. I can't tell you how many young children I've seen go up on the stand without the benefit of a parent or family member in the courtroom, and it's a terrifying experience for many of them.

We suggested as well that, when children are testifying, as much as possible the courtroom should be closed. It's very hard for young children to testify in an open courtroom with a lot of people who are strangers to them. We find that many times, crown attorneys will have to work around a docket trying to get a closed and quiet room, and it's not always possible. There are many school tours that come through our courtrooms



and fill up the courtrooms and listen to details of sexual assault told by young girls, and it's very hard.

The other thing we suggested strongly—and we're glad to see that this was a recommendation in fact that was mentioned in Bill C-126, which provided amendments—was that a defendant should always be prohibited from cross-examining a child in a sexual assault matter. We have had cases of adolescent girls where it has been an issue of incest where the father has cross-examined the child on the stand, and it has been devastating.

At the last moment, this person, on both occasions in the last two years, decided he did not want counsel, and even though the judge suggested strongly that he obtain counsel, he refused and wanted to do his own case and, as a result, he asked the questions. The questions were not difficult by any means, but it was the empowering of this individual in the eyes of the child and making this individual, in her eyes, have the same status as everybody else in the courtroom and the formality of the courtroom, that she was not able. In both situations, we lost both cases with the children not willing to go back on the stand, and we are very concerned, and we mentioned that again and again. I'm glad to see that's something that's come through.

One of the issues for us has been that Bill C-15 had a lot of good recommendations and we saw it as being fairly progressive in terms of, as I mentioned before, the reception of children's evidence and also trying to protect children just a little bit in this very difficult arena. But the problem has been implementation. I'll give you some examples so that you could see what we're facing.

The screen and the closed-circuit TV provision have been used very minimally across Ontario. In fact it has been used minimally across Canada, but in particular in this area. One of the reasons, I believe, is because, for example, with the closed-circuit TV provision, where a child would be allowed to testify in another room and have it videotaped into the main courtroom, the cost is prohibitive.

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First of all, to my knowledge, there are only one or two sets of equipment that exist in Ottawa. We just recently were able to obtain the equipment at a great cost of \$3,000 and have it brought down in advance to a courtroom in St Thomas in order for a young five-year-old child to testify about abuse by her babysitter.

The cost of the equipment is well over \$50,000. It took two trucks to bring the equipment, and it took the crown attorney and an assistant 12 hours to set it up. He also had to set it up in the judge's chambers, because there was no place to set it up. The time involved, the effort, are prohibitive. The majority of crown attorneys will not access that equipment at all.

I really believe strongly that there are many children out there—and that's certainly my experience as a clinician—who would give reliable and good testimony and be good child witnesses in court in respect of their victimization if they had that as an option, and it's just not there. So it seems to not matter that it's a right within the legislation; it doesn't occur. The majority of the crowns who you will speak to or who I speak to will say, "Well, it would be nice, but we're not going to get it if there's no use trying for it."

With respect to the screen, it's an option that is certainly less costly, but it's also not a very good option, and many of the children feel uncomfortable given that they don't like to be seen and not be able to see. We found that on a number of cases where we were able to secure these screens for younger children, it worked really well, giving them a sense of protection, but for the older ones, I think they had issue with it. The very best technology, we feel, at this point in time, given our own research and contact with, in particular, Australia that's doing a lot of work in this area, is that the closed-circuit TV provision should be available to children who want it when they have to testify in court.

The other thing that we would like to talk about is something we feel can be provided on a provincial level, and that is a courtroom dedicated for children. In Toronto I understand that there is a courtroom that's specifically designed for young children who have to testify in sexual abuse matters. The crown attorneys are trained in sexual abuse and in child abuse in general. The room is set up in a way that children can feel safe and comfortable and give their testimony.

We feel that as much as possible, where the numbers warrant it, courtrooms should be set up across the country so that the closed-circuit TV equipment and everything else could be set up in there and that different communities could access those courtrooms for the benefit of young children. We know from our research and we know from the research that we've read, when the child is not afraid and the child feels safe, the testimony is clearer, more concise and more complete. I feel very strongly that this assists in the administration of justice and certainly does not in any way hinder the accused's rights.

In the area of training for criminal justice personnel, I think we've been discouraged many times. I think there still is a fairly consistent bias on the part of judges, and I'll talk about that in a moment in a little bit more detail. There's certainly a gender bias that we've seen in terms of obtaining convictions for young females who have been sexually assaulted as opposed to young males. Also, there's a real lack of understanding on the part of the judiciary in general for issues related to child sexual abuse, child abuse in general, child development, issues around recantation and disclosure and those matters that pertain to sexual abuse.

Many judges, when they're determining whether or not a child is able to give competent testimony, don't know what questions to ask. Many of the questions are well beyond the scope of young children. They do not comprehend what's being asked of them and, as a result, they don't perform well. We also find that very often there are crown attorneys who don't know how to interview young children, who don't know a lot about sexual abuse per se, as a syndrome and, as a result, the cases are not well handled. They're not as well handled as they could be.

For that matter, there are also police out there who, when they're doing the investigative interviews, do not have the sensitivity that's needed and do not have the understanding of child development, and so the way they question the children and the way they do the statement-taking is not in keeping with the child's level. Very often we find that there are gaps in the information that children provide.

One of the findings from our three-year demonstration study was that preparation for young children who are going to be testifying in court makes a difference. It makes a difference because it educates them about what they're going to do in court, it helps reduce their stress and it helps them tell their story better. At no time at all in any of the preparation do we access the actual event that occurred, so it's simply just a matter of preparing children to testify in an arena which is really very adult oriented.

Another recommendation that came out of the initial work that we did was that after court a lot of work needs to be done, and I think in terms of the victims and victims' families, very often they don't know how to access the information. They don't know where it is they have to go.

We are concerned about victims' safety, and I understand that was one of the issues that's being discussed today in terms of bail. We have many cases of young children who accidentally come across their offenders, who all of a sudden are no longer in jail and are back in their communities. No one has told their families and no one has told them that these persons are out, and they fear for their safety.

We feel very strongly that they need to have more information made available to them about what happens to somebody when they are convicted and sent to jail, for how long can they be expected to be there, and certainly there must be someone with the responsibility to let them know when these people come out, because in some situations, unlike other kinds of crimes, there are one or two individuals in the community who are very much at risk from this person coming out, and we feel that at the very least they should be notified about it.

We don't have a lot of experience with the criminal injuries compensation, which I realize was another area,

but we've had about a quarter of our children who have made applications and have been successful. For the most part, they've been very pleased about the amounts of moneys that have come through. Most of the time that money is put towards treatment, although it's very hard; the waiting lists are long and it's hard to find someone to treat them. But certainly the money has come in handy in that regard. The only negative that was expressed in our follow-up study of the young children was that it took so long again. There seems to be a lot of bureaucracy in bringing the whole matter to closure.

The other thing that I wanted to mention is that in our study, about 40% of the kids and families had never heard of the Criminal Injuries Compensation Board, and when talking to them at the follow-up stage we were able to describe the service and ask them if they accessed it. They said they would have, had they known about it, and I think I heard a little bit of that theme in the last presentation. There may well be services out there, but helping people to access them is difficult because you see them at a time when they're in crisis, and a lot of what they hear I don't think they really hear or, if they do, they forget. They need to be reminded and have pamphlets or whatever that could do that for them.

In terms of the victims' bill of rights, in theory I certainly would have no problem with it. I think it's very important that we start to somehow look at a better balance and guaranteeing some rights for victims. I would suggest, however, given some of the experiences in the United States—and I think Alison could address more questions in that area, if you have them later—unless there's some teeth to the bill and unless it's perhaps put into our Canadian charter, it won't really translate into anything very different than what we already have.

But if we're going to move in that direction and we're going to outline rights, then I think we need this section that deals with children's rights. Child victims have specific needs that need to be addressed within the courtroom; not that they're any less competent, but I think they are more frail and there's a greater risk of traumatization for children when they're brought in. I think I will end there, and we could entertain questions.

**Mr Winninger:** I'd like to thank you both for travelling from London today to share your wisdom with us.

I just have one question that's based on a section at page 20, victims' bill of rights, where you state that you "are not of the view that a bill of rights for victims would provide anything more than superficial or cosmetic benefit. In fact, it might raise expectations for rights and services that will not actually be provided." I wonder if you might expand on that.



1650

**Ms Alison Hatch Cunningham:** Based upon the experience in the United States, where over 40 US states have got a victims' bill of rights, there's never been any large-scale research study that has been able to find any documented benefit of victims' bills of rights. Typically, what happens is that legislators fall short of mandating the rights, so they're not rights so much as the rights that are entrenched within the charter to which offenders have access: the right to counsel and the right to remain silent; it's just really a list of things that we'd like to be able to offer victims.

Therefore the victims who have been denied these so-called rights have had no actual recourse. So when they have been treated unfairly or when they haven't been involved in decisions or whatever, they've never been able to say: "How can I get that rectified? I'd like that acquittal overturned because my rights were denied and I didn't have access to that."

Without some reflection of true rights, such as were entrenched in the Canadian Charter of Rights and Freedoms for offenders, victims don't have recourse and they don't have any means of demanding that these programs actually be provided by the government. So they tend to be fairly hollow promises. I would have concerns that without a commitment of resources to the end of providing these programs for victims, it would be nothing more than a piece of paper that says some very nice things.

**Mr Jim Wiseman (Durham West):** I'm intrigued with the cost of the setup of the cameras and all of this for the giving of testimony in a protected environment. Can you give us a description first of what they actually set up, how they did it, how many cameras they used and so on?

**Ms Sas:** Yes. You have to realize that because it can be moved from one courtroom to another and has to be set up in each, it probably involves much more equipment than would be necessary if it was remaining in one courtroom.

First of all, in the courtroom itself, the judge has a microphone available to him and also earphones. He has a TV screen on his desk. There is also a large screen so that everybody in the courtroom remaining can also see the child, who's in another room testifying. In cases where there is a jury and a judge, the jury would also have a screen that they could view. In another room, in between the two rooms, there's this very large—I don't know what it is—where the technician is, but it involves a small TV screen and the person who is monitoring the sounds from both rooms and ensuring that everybody can hear everybody else.

Because the accused remains in the courtroom—the accused has to be able to communicate with his or her counsel in the other room—they also have earphones and they are hooked up as well.

In the room where the child is, usually the defence lawyer and the crown attorney and sometimes a support person like myself will be allowed to sit in, as well as the child. The way they've set it up is the defence lawyer and the crown attorney will be sitting next to each other and the child on the other end. There are cameras and TV screens on both ends so that the child can see into the courtroom when the judge is asking her a question. I think it's voice-activated, so depending on who is asking the question, the camera will screen the room and focus on that person.

For example, this young child was asked a question by the judge and she saw the judge on the screen at that time. When the defence lawyer was asking the questions, he was the one who was appearing on the screen as well as the child. The concern is that the judge and those in the courtroom can always see the child's reactions as she is speaking or when she's being asked questions.

All I know is that the amount of equipment in terms of its size and weight took up the entire middle of this room. We had received 10 of the 12 boxes of equipment and it looked like a heavy metal band. It was unbelievable. It was also very difficult to set up. You can request that a technician come with the equipment. The problem is, there may be many cases on at the same time across Ontario that need the equipment. You need to ask in advance for it, and to tell you the truth, the majority of crown departments don't even know it's there and that they can ask for it. Often you don't know you're going to need it till closer to the date. It's really impossible the way it is now. I don't see how it can work.

**Mr Wiseman:** Sure. In terms of confidentiality of the witnesses and all that, is that what has been prescribed by law, that it must necessarily take place, or is there something more minimal that could happen that would serve the same purpose?

**Ms Sas:** The law doesn't have any directions in it per se as to how much equipment or how it should be carried out. I think the intent of the legislation, when it is used, is that the child can be in another room, because one of the issues that we know is most difficult for young children is facing the accused person. Across the board, that's the thing children fear the most. It doesn't really seem to matter if they've been very severely abused or not as severely; children just are very afraid. So putting them in another room means you need the equipment in order to have everybody here and listen.

You're probably right: It probably could be done for a little bit less, but it certainly would cost a lot less if there were some stationary programs and dedicated courtrooms where this equipment was just routine and it was hooked up. I think in that way it would be less expensive.



**Mr Murphy:** If I could just follow up on a few of those questions, do you know how many courtrooms or jurisdictions within Ontario have those facilities now?

**Ms Sas:** One, and it's in Ottawa. I understand the kids' court here in Toronto is set up as well. They must have gotten their equipment privately, which is what we will try to do as well.

**Mr Murphy:** Okay. The other thing is, I was wondering: Your clinic essentially deals with child victim witnesses after charges are laid.

**Ms Sas:** Actually, the clinic itself has a much broader mandate. The family court clinic's larger mandate is to provide young offender assessments before the court. We also do child welfare assessments when children's aid is involved with parents over rights of young children and custody and access assessments. We also deal in the area of wife battering and women abuse.

Then we have a child witness project, with myself and Alison and several others, that only deals with young children where charges have been laid. But more and more, we're becoming involved in doing assessments of young children where there are suspicions of abuse having occurred and trying to ascertain whether or not the children's aid should become involved. There are concerns there. So our mandate is also broadening.

We also provide victim impact statements and I do a lot of expert testimony in court.

**Mr Murphy:** We heard from an earlier witness about the problem of victims not having access to adequate services if a charge isn't laid or prior to the laying of charges, the police contact and counselling almost right away. I'm wondering if you could describe a little bit for me and the committee what happens at that point.

**Ms Hatch Cunningham:** Actually, that is the substance of one of our recommendations. I will have to flip through and find which and where it's located, but one of my observations has always been that to house the victims' services only at the courthouse serves to deny a wide number—a huge proportion—of victims' access to services. What we've always said is that what victims really need is information and support and really simple stuff that doesn't cost a lot; just a bit of sensitivity to their issues. But when you focus solely on victims who go to court, you've missed all the victims who didn't report the crime and you've missed all the victims for whom the offence was not cleared by charge.

We would, as one of the recommendations, advocate that victims' services should be located in police departments, because police are the front-line agencies. They see the widest proportion of victims of any actors in the criminal justice system and they deal with victims

on a crisis intervention basis oftentimes. In British Columbia, the province I'm from, I believe that is the model: that victims' services are housed in the police departments.

**Mr Murphy:** One last question, the Chair advises me. It's more, actually, a comment on your training for criminal justice personnel. I think you have a suggestion here for an interpreter to be used for children. I actually think I disagree with that for two reasons. One is, I think it probably ends up being too costly.

Let me just make the side comment, though, that the concern about intelligibility of questions asked by lawyers and judges in courts is not limited to children. Having experience, courtroom lawyers all the time ask questions that no one can understand, never mind just children, so I think it's a broader issue than that.

But I think your recommendation in fact makes sense to me in that you end up with a recommendation that what you need to do is have training as part of what goes on for sensitivity in all aspects of the criminal justice system. I think that makes sense and I'm wondering how you view that working as an annual thing or how you would see it working in practice.

1700

**Ms Sas:** Just two comments. I agree with you that having an interpreter would be very costly. I think it's in desperation that we were pointing that out. I'll give you just one quick example to highlight it. Just recently, I had a young boy who was testifying in court about a physical assault, and the crown attorney was actually asking questions, and there were numerous instances of physical assault on the part of a foster mother that he was alleging. The crown attorney stood up and said, "Well, what"—the boy kept forgetting to say something. There was a large piece of his testimony that he was not alluding to that was crucial to the matter that I knew but he was just sitting there, and she kept saying: "Well, what other injuries? Were there other injuries?" and she got nothing. I finally touched her on the back and I said, "Can I write you a note?" and she said yes and I said, "Ask him if he was hurt anywhere else," and then the entire—"Yes, of course I was hurt somewhere else." It was that simple.

I can't tell you how many times I have sat in the courtroom and have brought young children in where it's not just the defence lawyers, the crown attorney as well, or the judge, in asking a question. "What is your moral obligation to this community here today of a 10-year-old child about telling the truth?" That's sort of what I was suggesting.

So in response to your question about training, we're becoming more involved on a local basis with the crowns and with the police, certainly; less so with the judges. That's sort of the last horizon. I know this summer that I'll be doing some training at a conference for judges in Quebec. I don't know that yearly is

enough. I know it should be compulsory that if you're going to deal with young children, especially in these very sensitive matters, that has to be a part of your training and you have to continually review it, like we do.

**Mr Murphy:** I would assume that a dedicated courtroom with dedicated officials would be in fact be able to—

**Ms Sas:** "Dedicated" is a global term. "Dedicated" means "trained." If you do the training, you're dedicated, yes.

**Mr Jackson:** Louise, Alison, thank you for your brief, especially with the so-clearly-set-out recommendations. I wanted to dwell on the concept of "offence not cleared by charge." Are you keeping stats on this? Because I'm currently working with a couple of cases in Halton that are deeply disturbing to the families involved, and they're frustrated. They don't know what to do. It's all come down as you've seen it thousands of times, probably, where it's the child's word against the adult's. Are you keeping stats on this? I've checked with our crowns and they're really not keeping stats on this and this frightens me, the number of kids who—

**Ms Sas:** Certainly in our jurisdiction the crowns would not be the ones who would have the stats; it would be the police.

We did a study over a two-year period of time where we looked at the two years just prior to implementation of Bill C-15. I'm trying to get a sense, because we felt strongly that the police, and particularly with young children, do not lay charges. Their concern is mainly around frailties of young witnesses and the lack of corroboration and so forth.

At that point in time, it was about a third, a third and a third. So a third were cleared by charge—that is, a charge was laid; a third were cleared otherwise, which I'm not exactly sure what "otherwise" was; and a third were not cleared by charge, which I found really very high. I think the funnel system is really at work here, where you have numerous unreported incidents of all kinds of crimes, particularly, let's say—I'll discuss children mainly, and then you have a certain number that do come through but the police probably respond to about a third of them; maybe a little bit higher.

We have seen an increase in the response rate of the police to children in our community. I think it's because we're watchdogs and we're there, and also because they're educated in dealing with young children and they get better statements now. So they feel they have something to go to court with. I think it's getting a little better in our own jurisdiction but I don't know what it is across the province. I think it would probably be quite variable in some communities where a lot of them are not cleared by charge and there's no recourse; there's nowhere to go. A lot of what I do in the area of

custody and access and child welfare is just the cases you described, when it's an intrafamilial situation, that is, within the family, where there are allegations of abuse, where the police feel they just don't have enough—a three-and-a-half-year-old child, whatever, and then where does it go? Those are very frustrating.

**Mr Jackson:** You mentioned access issues. We've been assisting with supervised access. I know I'm off topic slightly, but I'm on topic when these are victims in matrimonial disputes where there is implied or established violence. I understand your supervised access program may be terminated in London.

**Ms Sas:** In our area, yes.

**Mr Jackson:** Ours never was started, but we started one and we've lost that location. So just as a community effort, we're trying to pull that together.

You were here earlier when I raised the issue with Mrs de Villiers about the case of the multiple family incest. In that case, after considerable time spent on it, the family started to relate how they'd been treated. These young girls were first introduced to a police officer. They felt once the mother dealt with it, then she could deal with the daughters being sexually assaulted. The police officer visited them in uniform. They were seven and nine, I think, at the time, the daughters.

He never informed them that they had a victims' impact statement. He just said, "What happened?" and gave them a sheet of paper. After three or four minutes, they wrote a few things. He took that and that was the basis on which he did the investigation. It was a person who'd been sexually assaulted outside of the family who actually brought the police in, but that was the first introduction.

On the strength of that statement, without informing the girls, the young children—they were children of seven and nine—that was the basis on which there were no charges laid because their statements were so lacking. But they were never informed. Are you seeing more and more of that or less and less of that?

**Ms Sas:** We're seeing less and less of that. I think we're really fortunate. We have, maybe because it's a smaller community, a really coordinated effort. We meet monthly and we have representatives of the crown attorneys, the police, the children's aid, ourselves, the victim, witness people. We have a very good victim witness assistance program.

Actually, I just reminded myself that, you know, I understand there may be 11 or 12 of them across the province. You need them everywhere. They provide at the courthouse the kind of support that most of us as professionals don't have the time to give. We can't give the kind of hours to sit there for a whole day with people going through the court system, but for a very, I think, limited cost, they provide wonderful services.



I think we're seeing in our community less and less of what you described, sort of the horrors of poorly done investigations and poor response by the system. But then again, I still have cases that come through where I'm sorry for the children, I'm sorry for the families that they ever took that recourse. They're being doubly traumatized in that setting and, to some extent, even harassed. It's not worth it, because I think we can all agree that why we're setting this all up, why are we prosecuting these kinds of cases is to protect them, and they're not protected in that arena.

**The Chair:** One last question perhaps.

**Mr Jackson:** Very quickly, then, one for Alison. I respect very much what you have to say about the victims' rights in and of themselves. Those of us with any legal training understand that, but the experience—and I've studied them in other jurisdictions both in North America and across Canada.

Where there has been, at least in the Canadian experience, because the Americans have unique problems themselves, I think—but the Canadian experience, once the provincial government makes the commitment in this area—we've seen an acceleration on several fronts of reforms and the sort of more enlightened approach you referred to in BC case where the placement of services was well thought out and appropriate and so on.

I know in Manitoba native access to justice is vastly improved as a slingshot out of their victims' bill of rights, the first in Canada. Would you not suggest that in the shadow of a victims' bill of rights speaks at length about a commitment and does, in and of itself, begin the process of greater reform as opposed to less reforms?

**Ms Hatch Cunningham:** Absolutely, as a catalyst to some better service provision, then it would be very helpful. It is, as you say, a statement that a government is concerned about these issues and committed to examining them. I would just be concerned that governments, not necessarily this one, sometimes take the glitzy approach. "Let's pass a stalking law because that's kind of an interesting thing and let's get some PR because we have an election coming up." But the issue of course is enforcement of those provisions and training of people to do that. I'm just concerned that it could be misused as the appearance of reform rather than any actual substantive reform.

Just in conclusion, I'd say that we've got sort of the best of worlds and the worst of worlds, because in some areas we have wonderful victim services and in others they don't exist.

**Mr Gary Malkowski (York East):** What I'm wondering is if you have any kind of special process, or

what happens to disabled people or people who have trouble communicating? Do you have any kind of experience in dealing with that? If you do, how could you expand the services, and what would you see worthwhile in that when it comes to interpretative services and that kind of thing?

**Ms Sas:** Yes, we do. We actually have a person on staff who signs and has done core preparation through signing. We've had a number of young children who have come through with very special needs and we've actually tried to work with the core system to provide for their needs. They have trouble providing for children, let alone children with special needs, but we have had many children come through. In fact, about 10% of the children who have come through have had some special need that we've had to address.

We've had four or five children who have come through who have had difficulty hearing and have had to have someone sign in the courtroom, where we've made sure that the interpreters were there and assisted in the actual court process, both at preliminary hearing and at trial.

My understanding is that in Bill 126 there is a provision to address the special needs of some of the child victims who are coming through and that these provisions will be made standard and available; for example, the screen and the closed-circuit TV as well. I guess that would be my response. There have not been very many children.

I do know of several studies, however, and we've been concerned that many of the children are more at risk for sexual abuse and for physical abuse. In fact there was a very good paper done out in BC in respect of that matter. We've tried very hard to understand those issues and to be wary of them.

There was one case most recently at the Robarts School that we were involved with and provided consultation to the staff there around abuse allegations that were occurring in that school and with those children. How were we going to prepare and provide services for those children? Yes, we have been making an attempt in that area as well.

**The Chair:** Thank you very much for your presentation. It was very informative.

Two things for tomorrow's committee meeting: We have a full agenda, so I would urge the members to come on time so we can start at 3:30. Secondly, Andrew McNaught has done some research based on a question that was asked by one of the members. If there are comments, we can deal with that at the next meeting, particularly if we start on time. The meeting's adjourned.

The committee adjourned at 1712.





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- \*Winner, David (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick  
Martin, Tony (Sault Ste Marie ND) for Mr Duignan  
Wiseman, Jim (Durham West/-Ouest ND) for Ms Harrington

#### **Also taking part / Autres participants et participantes:**

Cunningham, Dianne (London North/-Nord PC)

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



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## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 1 June 1993

# Journal des débats (Hansard)

Mardi 1 juin 1993

**Standing committee on  
administration of justice**

Victims of crime

**Comité permanent de  
l'administration de la justice**

Victimes d'actes criminels



Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 1 June 1993

The committee met at 1630 in committee room 2.

## VICTIMS OF CRIME

Consideration of the designated matter pursuant to standing order 125, relating to victims of crime.

**The Chair (Mr Rosario Marchese):** I call the meeting to order. Wendy, I'd like, as the Chair, to thank you for coming and thank you also for allowing us to continue with the others and to reschedule you or somebody else for another time. We apologize for this, but there are things that we can't control.

**Ms Wendy Calder:** I realize; I just wanted to tell you the good news about some of the—

**The Chair:** Somebody else will do it then.

## VOICES FOR CHILDREN'S RIGHTS

**The Chair:** Okay, can I invite Virginia Foster then, president of Voices for Children's Rights, to come and make a presentation. Welcome, Virginia. Please feel free to begin at any time. You have half an hour, and if you would like the members to ask you some questions, allow for that, 10 or 15 minutes at the end for that to happen.

**Ms Virginia Foster:** All right; thank you.

It has become quite obvious for all victim advocacy organizations across the country that a serious imbalance is present in our current justice system regarding the rights of victims of crime. On our numerous travels across the province of Ontario, we have been privy to horror stories regarding this supposedly fair and just system. As Canadians, we have to recognize that victims of crime are unfortunately victimized throughout the course of the justice system over and over again.

How do we correct and deal with this problem? First of all, we have to recognize that victims of crime should be treated with the utmost respect and compassion that they deserve. To repeatedly rape them of all respect and self-esteem is intolerable to us.

For example, for the last four months, I've been dealing with a family from the Kitchener-Waterloo area. Last year, the 11-year-old male child was sexually assaulted in a Kitchener-area respite home. The circumstances regarding the sexual assault are even more serious in nature, as this child is developmentally challenged and also has a severe chemical disorder. The offender was subsequently convicted of the sexual assault.

Months after the trial, a member of the Waterloo Regional Police Service appeared on the family doorstep to question this boy in relation to the sexual assault of

a neighbourhood girl. The method that was used was the "fear of God" approach to snap this child out of this pattern of sexual deviancy. There were no criminal charges laid against this child. All of this questioning was against the wishes of his mother. Is it police procedure to tell a victim of a sexual assault that, "If you are a victim, you will repeat this form of victimization on others"?

The end result of this police action is that the mother of this child spends countless nights and days in the local hospital with her child on suicide watch. He fears that this constable is coming to get him and refuses to leave the home unless accompanied by his mother. His only goal at the present time, even while under the supervision of a paediatric psychiatrist and a neurologic paediatrician, is to kill himself.

The Solicitor General's office offers programs in victim empathy. Why are these programs not mandatory for all law enforcement officers and officials? Why should a child fear the police and the justice system? Should not the role of the police be a positive influence in a young child's mind, and not a negative one and a devastating one?

It has been agreed upon that the support of any police service to a victim of crime be paramount to the recovery of the victim. This positive action will then set the tone of future involvement with other facets of the criminal justice system. The role should not be to paralyse them. At the same time, we commend all law enforcement officers and officials who are respectful and understanding to victims of violent crime.

An existing program in the justice system is the victim/witness assistance program currently operating in federal and provincial courthouses. It is our observation that this program is clearly understaffed and is not able to provide for victims to its fullest potential. That is only one example of many programs that are needed for victims and their families which are not properly provided at this time.

Some of the inadequacies in the victim/witness assistance program are: first, a lack of follow-through from start to finish of the court procedure; second, a trained employee or volunteer of this program not adequately walking the victim through the system step by step—we have to remember that these are children that we're dealing with in this system—and third, this program does not always assist them while the victim awaits to testify against the accused. The last aspect is paramount, as the victim may be accosted by the accused if the accused is not in custody. These issues

may seem minor, but to the victim they are a reality.

We have recommendations for existing programs: (a) quality training for all volunteers and employees; (b) mandatory CPIC for all volunteers and employees; (c) more emphasis on counselling and support for victims of crime; (d) informational packages clearly formatted regarding the justice system, available to all victims of crime in a layman's terminology; (e) a victim support package outlining services provided by the provincial and federal governments; (f) a listing of victim advocacy organizations that relate to the needs of the victim.

Voices For Children's Rights is a child victim advocacy organization which frequently deals with children experiencing post-traumatic stress disorder. We are often exposed to the reality of children having to face their accused assailant in the courts. Recommendations to alleviate court trauma are as follows:

(a) A victim of a sexual assault experiencing any post-traumatic stress disorder give testimony in the judge's chambers in the presence of the judge, crown attorney and defense counsel. Video and audio tapes will be forwarded then to the accused.

(b) In the case of a victim who is experiencing any severe medical conditions, a victim advocate will be appointed to them, to read testimony or a victim impact statement into evidence. The victim advocate would be appointed at the victim's discretion.

(c) That a screen shielding the victim from the accused during the court process be an option for the victim, to alleviate any further trauma at the discretion of the crown attorney and the victim only.

We are asking that these recommendations be taken seriously as they pertain to this next section.

In 1990, a seven-year-old girl from the Pickering area was brutally raped by an ex-member of the Satan's Choice motorcycle gang. When this man was charged, it then went to the court process and 18 months to then proceed to trial.

While under the supervision of her paediatric psychiatrist, the young traumatized girl could not face the accused, as he had threatened her with death if she told anyone of the assault. The crown had no choice but to plea bargain with the accused, resulting in a two-year sentence as opposed to the ten-year sentence they were seeking.

The pain continues even after the court process, and now we welcome you into the special world of Correctional Service Canada and the National Parole Board.

Correctional Service Canada claims to have a document retrieval system in place. Unfortunately, what we have found is that it's often up to the victims and the victim's family to retrieve information on the offender and then present it to the National Parole Board for risk assessment. All this is in the hope of keeping the offender incarcerated just a little bit longer.

A further problem that we have encountered is the lack of information that is given to victims regarding parole and absences of offenders. This is a definite problem with the correctional service of Canada, again. Too many mistakes are being made on the part of this service, with little or no input on the part of the victims.

Victims are not being informed on a regular basis of upcoming escorted or unescorted absences, day parole, full parole or work release programs. Furthermore, sufficient conditions are not being placed on their conditional releases to provide safety for the victims.

Recommendations for Correctional Service Canada and the National Parole Board are as follows:

(a) All victims of crime be informed, with notice, of the offender's work release programs, day or full parole and any medical leave if in the victim's area of residence.

(b) If the offender is unlawfully at large, the victim be notified immediately.

(c) The victim or victim's advocate be given immediate access to the decision registry of all parole decisions.

(d) Informational sharing between police services and the National Parole Board and the correctional service of Canada. If there is a publication ban on the court proceedings, the police will give the names and addresses of the victim(s).

I recently attended, just last week, the parole hearing of the offender convicted of raping the seven-year-old girl from the Pickering area with the victim's parents. Needless to say, it was the most devastating experience for both the parents and for myself. One of their main concerns and questions was, "Why were we denied the services of a victim's advocate, paid for by the provincial or federal government?" They felt that the services provided by our organization were truly beneficial to them and should also provide for other victims of crime and their families. Can provincial and federal governments not set aside funding to include the above-mentioned services, or enhance—please enhance—the already existing programs?

**1640**

On May 16, 1991, Mr Cam Jackson introduced a private member's bill that establishes the rights of victims of crime. In it, Mr Jackson demands that victims be given access to health and social services, medical treatment, counselling and legal services that are responsive to their needs.

This is unfortunately not the case in the province of Ontario due to provincial cutbacks. At present, there is an extensive waiting list for such health care services, especially in the Kingston, Ontario, area in which I reside. For any type of psychiatric counselling, the waiting list for private practice psychiatric help is six months, and for hospital psychiatric counselling the



waiting list may be for up to one full year. Unfortunately, victims cannot wait this lengthy amount of time for psychiatric therapy after being a victim of a violent crime.

In closing, Voices for Children's Rights recognizes the immediate needs of all victims, and that their personal wellbeing far outweighs the costs taken on by the provincial and federal governments. We expect that funding never be an issue when it comes to the recovery of crime's helpless victims.

**Ms Margaret H. Harrington (Niagara Falls):** Thank you, Ms Foster, for coming all the way from Kingston and for your very well prepared brief.

You make some very good and direct recommendations here, certainly on page 6, that the victim be notified immediately if there is that imminent danger and that the decision registry be open to the victim or the victim's advocate. I would like to look into this further. Those seem quite reasonable to me. You also, towards the beginning, are asking for the existing program, the victim/witness assistance program, to be extended, I guess, to further communities.

**Ms Foster:** Yes.

**Ms Harrington:** It's only in certain communities now.

**Ms Foster:** Yes.

**Ms Harrington:** Okay. I think we're looking at that and seeing what we can do.

Also, on the first and second pages, you have quite a concern here with regard to, it seems, the action of the police. Would you like to explain that a bit further? I didn't see any recommendations in here in that direction.

**Ms Foster:** The one recommendation I have regarding police service is that they have some type of mandatory empathy training towards victims. If officers cannot personally, for whatever personal reason, go forth and help the victim of a sexual assault, please assign them to some other type of detail. There should only be certain police officers who deal with sexual assault victims or any small children. They definitely have to be trained further.

This is a very serious case in the Kitchener-Waterloo area that I'm dealing with. I'm going to see the mother of this child and the child tomorrow. I've just been notified he's been expelled from school for two days and she's on suicide watch at the hospital again with him. This is a very serious case.

**Ms Harrington:** So in this particular case and probably in other cases, you would find that the sensitivity of the police is really a problem?

**Ms Foster:** Yes, it's most definitely a problem. I by no means am branding all the police with the same hand. You have a lot of very reputable police officers

who do their job, are very sympathetic and empathetic to the victims of violent crime, but unfortunately, if you have a handful of very good police officers and you have one bad one who can devastate one child's life, that has to be dealt with, and programs should be mandatory.

**Ms Harrington:** I think and I hope that things are changing in that direction. I know in my own area, which is the Niagara region, I have been speaking with some of our police officers and I think there is a new era coming and that they are going to be much more sensitive, and we have to, of course, as a government encourage that.

Are any of my colleagues wanting to speak?

**Ms Jenny Carter (Peterborough):** I'd just like some clarification. I think I know what you're saying, but when you say that a month after the trial a member of the Kitchener-Waterloo regional police service appeared on the doorstep and accused this boy, did they do that just simply because this child had been a victim?

**Ms Foster:** That is rumoured to be the case. There was a small six-year-old girl in the building where the child resided with his mother and with his brother. The police went to question the young girl. This boy was alleged to have kissed her on the neck. The police officer observed that there was something strange going on between the father of the girl—it seemed there was some type of incestuous relationship—but because they knew that this boy had been raped in an area respite home, they went right down to him. It is in writing that they use the fear-of-God approach in the Kitchener-Waterloo area to scare children into living a straight life.

This boy is so troubled now—he suffers from a chemical disorder—that next week he goes to London, Ontario, for a CAT scan because his chemicals are totally out of whack now and his only goal is to kill himself.

**Ms Carter:** So this was the combined effect of the original assault and the accusation.

**Ms Foster:** Yes. He more so has dealt with his original sexual assault. All he thinks about now in every waking moment is the effects of this constable.

**Ms Carter:** Well, that does seem to have been unforgivable.

**Ms Foster:** Yes, it's quite sad; it's quite devastating.

**Mr Alvin Curling (Scarborough North):** Thank you very much for coming before the committee to make your presentation. I apologize for coming in late. I came in in the middle of it.

As I was hearing your drift and I was trying to read this, I got an impression here that you feel the police are inadequately trained in this area. That's one aspect, that more training should be done, and also training

funds be available, "training" meaning that you also have to put funds towards the police—

**Ms Foster:** That's right.

**Mr Curling:** They're inadequately funded here by this government now anyhow. The volunteer sector of it needs training also.

First, I should maybe ask you this: Are there any funds at all available for training for volunteers?

**Ms Foster:** For members of the police association?

**Mr Curling:** No, for the volunteers, not in the police association. I think as I read it in here, it seemed to me that the volunteers who assist in this type of work should be trained properly in assisting victims, so to speak.

**Ms Foster:** I think for anybody who volunteers in any type of capacity in victim advocacy, as non-profit organizations we have no money. What we have to do is we have to go out and beg and borrow from every location we can find to train our volunteers.

**Mr Curling:** So no funds are available to organizations in order to train volunteers.

**Ms Foster:** We've started up numerous types of fund-raising drives, corporate sponsorships and working with the lottery commission and Nevada tickets, but it's constantly an endless job of trying to find funding. We most certainly wouldn't approach the provincial government, as we know there's no money to be given out.

**Mr Curling:** You would not approach them? Now, don't say no to them until you come forward. I think you should approach them in this regard. It's an important role which they're playing in assisting—I think somehow you don't like the word "victims" in this. I think you should.

Of course, government can't do it alone, and I understand the scarcity of money, but sometimes some responsible way of administering funds may direct some money into your area where it can be handled in a very responsible way. So there are no funds at all coming to groups like Voices to assist in any training?

**Ms Foster:** No, none.

**Mr Curling:** I just want to go back to the police, and I'm sure they must have shared with you. Are they saying there are extremely inadequate funds? Is there a lack of training altogether? Is there any training at all in how police deal with these situations, or are they just doing it from their maybe training or feeling from what they've done through their young days or a compassionate feeling towards the victims? Is there any set training in the police force?

**Ms Foster:** What I was told last week by Mr Scott Newark, who's general counsel for the Canadian Police Association, is that the Solicitor General has a program on victim empathy. I've never seen it. I had never heard of it before until I was in Toronto a couple of weeks

ago.

I think what it boils down to right now is that you have some police officers who are very compassionate and really care about their victims. But other than that, I don't have any more information on it.

**Mr Curling:** But it's not really professional. You want something professionally done.

**Ms Foster:** Yes, something mandatory.

**Mr Curling:** Where the government itself takes a responsible role in this.

**Ms Foster:** Yes, that it be mandatory. If the course is six weeks long and it takes one day every weekend for each police officer to go to and have some type of victim empathy training, then I think that's very important.

**Mr Cameron Jackson (Burlington South):** Wendy, thank you very much for your presentation and for highlighting several areas for reform.

**The Chair:** Virginia.

**Mr Jackson:** I'm sorry, Virginia. I'm trying to read a deposition of a three-year-old sexual assault victim and I had my mind on this in preparation for questions, so I apologize.

**Ms Foster:** That's all right. Thank you.

1650

**Mr Jackson:** You have had occasion to have a look at the victims' bill of rights and recognize perhaps that it is not too dissimilar from victims' bills of rights from across Canada, in the nine other provinces that have them. Some have come forward, as Mrs de Villiers did yesterday, to suggest that the coroner's inquest clearly indicated that a victims' bill of rights should be recommended for this province. We heard from a court advocate from London that they're highly symbolic, these victims' bills of rights. We're getting differing opinions.

However, if you were to specifically look at some of your recommendations, do you not feel that a victims' bill of rights that clearly states—and I just cite the one example that comes to mind—the mandatory notice of a victim that their assailant has gained early parole and is at large in their community, something as simple as that, isn't really a major expense to the province and to the taxpayers of Ontario?

But to have talked to the number of victims of sexual assault, as you have—or for one of my constituents who was working at her desk and her boyfriend got out of jail a year early and confronted her with a shotgun at her place of employment in Burlington—somehow notifying the police in the area where there were threats or violence, even something as simple as that could become a required protocol in this province at not too great an expense and yet it would be enshrined in a bill or in legislation or the requirement of the Attorney



General in some other form of regulation.

Can you understand why we're not proceeding in these areas?

**Ms Foster:** I don't understand why the provincial government is not proceeding in these areas. Most definitely, it's so important that if any offender is going on any type of work release program or early parole, the victim of the violent crime has every right in the world to know exactly where their assailant is at any given time.

Can you imagine being a victim of a brutal rape, or if somebody murdered your child, and you're walking down to the store or you're shopping at the A&P and you run into him, what that does to your life? You fear for your life. All of the victimization that you went through comes back to you. A victim doesn't deserve to go through that again. The victim should be a victim the one time and should be able to get on and deal with their life, not be victimized for the rest of their life.

**Mr Jackson:** Are you familiar with the requirement, in terms of bail, which says that an assailant must stay 300 yards away or not be in the same community? There are several conditions. Have you ever talked to victims about the true legal effect and how the police interpret those kinds of bail requirements in terms of the onus on the victim to leave the restaurant, the onus on the victim to lay a charge but only under the circumstances that it can be sustained or else she can be sued for harassment? I've talked to several women victims of assault. The process has allowed them to be out in the community and this 300-yard limit is an absolute joke. I mean, they're literally stalking people.

**Ms Foster:** We haven't been dealing so much with offenders who are being let out on any type of bail. Mostly what we've been dealing with are parole conditions.

I'd like to get back to this case of the seven-year-old girl who was raped. The Satan's Choice motorcycle gang ex-member—who, by the way, was sergeant at arms; he was the bone breaker for the organization—last Thursday was granted day parole to the Archibald Centre in Toronto. Conditions of his supervised day parole are that he not go to the Pickering area where this family lives.

How good is that, meaning the young girl who's now 10 years old goes shopping with mom and dad to the Scarborough Town Centre or goes somewhere into Toronto to go and see her psychiatrist every week? So she runs into him. That's fine. Where are the conditions right there? That's our concern. They have to flee because he's allowed to be there. There are no conditions that he cannot be within 300 metres of them. There are no conditions whatsoever.

**Mr Jackson:** I guess the fine point I was putting on to it is, even the way the current law is interpreted by

the police, the onus is on the victim to leave, not on the assailant to leave. That's the law.

**Ms Foster:** That's right. And why should the onus be on the victim? It should be a case of the offenders get away as fast as they can. If they can't, then they be rearrested and put into custody. The onus should not be on the victim. The onus no longer should be put on the victim of any violent crime. It should be in the hands of the provincial and federal governments and in the hands of any police service to take care of an offender.

**Mr Jackson:** I guess if I can use your example of the seven-year-old, you're familiar that not every province has a parole system. Ontario happens to have one. I don't know why Ontario's one of the few provinces to have a parole system for two-years-less-a-day offences, but it does.

Recently in a committee hearing we asked the question about victims' rights as they relate to the parole system. We uncovered that although victims could have impact statements, that was only at the board's pleasure. But they were proud that recently they had improved conditions for parolees because they were guaranteed legal access. No one was allowed to do a victim's impact statement. The victim who did the statement had to be videotaped for the records, for the lawyer. The intimidation was just unbelievable.

That this was somehow seen as a reform—a reform for the parolees—fair ball, but if this was seen as some sort of effort to assist victims who wanted to express to a parole board what pain and suffering was occurring in the community—perhaps the healing and acceptance process wasn't advanced enough for them to face the issues you were just raising. Those are the kinds of reforms that are occurring, but not the kinds of reforms that you're requesting.

**Ms Foster:** Most definitely. To go to a parole hearing with the observer status that you obtain from the National Parole Board and sit with the victims of violent crime is a pretty unbelievable thing to witness. I sat there last Thursday next to the parents of this 10-year-old child, holding the mother on one side and holding the father on the other, while tears ran down their faces, while this man said: "I'm sorry, I'm sorry, I didn't mean to do what I did. It was only in four inches. What was the big deal?" And he was granted his day parole.

Those people handed their impact statements in, but they could not speak to any member of the National Parole Board. Not once did both of the members of the National Parole Board look at them to see their grief-stricken faces, and that's not quite sufficient enough. It is also up to the members of the National Parole Board whether or not they decide to read the victim impact statement into evidence.

**Mr Jackson:** And that's the case in the Ontario process?

**Ms Foster:** Yes.

**The Chair:** Ms Foster, we'd like to thank you and acknowledge the time, effort and dedication that you put into advocacy for children's rights.

HONOURABLE MARION BOYD

**The Chair:** I'd like to invite the Attorney General, Marion Boyd. Ms Boyd, as you know, we have half an hour. If you'd like to leave time for members to ask questions, it would be useful.

**Hon Marion Boyd (Attorney General and Minister Responsible for Women's Issues):** Thank you. I'm pleased to be here today to talk about the current status of the relationship between victims of crime and the province's justice system and how we're working to improve that relationship.

Let me begin by saying that the treatment of victims of crime is a subject that has been of great interest to me for many years, most recently as Attorney General and minister responsible for women's issues, but of course in my previous life as a community advocate for battered women.

It certainly is true that victims have traditionally felt left out or forgotten by the criminal justice system. In recent years, however, many things have been done to try to make that system more responsive to the needs of victims, and our government is determined to continue to build on that process.

The federal and provincial initiatives over the last five years have only begun to address the problems faced by victims. Legislative, administrative and policy changes, as well as new services, have been initiated to provide assistance to victims of crime. Victims are receiving a greater number of high-quality services, but we recognize that services for victims must be more consistent, more equitably distributed and more adequately staffed. I'll have more to say about that in a few minutes.

The government provides considerable financial support to services for victims of crime. In 1992-93, approximately \$107 million was spent on services for victims, including \$72 million of it on wife assault prevention initiatives, \$21 million on sexual assault prevention initiatives and \$14 million on criminal injuries compensation.

1700

The funding for the wife assault and sexual assault prevention initiatives is an interministerial initiative which has representation from 16 ministries with a commitment to addressing the issues of victims of crime. This funding supports a broad range of services including emergency shelters for assaulted women and their children, community counselling programs, cultural interpreter programs, sexual assault centres and any number of others.

In addition, \$2.7 million of the initiatives funding is

allocated specifically to the Ministry of the Attorney General to operate a number of programs which are designed in our ministry to assist victims of crime. One of these, and probably the most important, is the victim/witness assistance program, and I know you've heard something of that in testimony before. This program is designed to provide a very necessary service to vulnerable victims and witnesses to enhance their understanding of and participation in the criminal justice process.

The program currently operates in 12 crown attorney offices across Ontario, providing crisis intervention, referral services, court preparation and support, community coordination and public education, recruitment and training of volunteers. In addition, a new site was opened in Kitchener on December 1, 1992. This site will provide victim/witness assistance to the former residents of Grandview Training School for Girls. It will become a permanent program site at the conclusion of the Grandview training school prosecutions. Similar services were provided to the St Joseph's and St John's training schools and the Prescott child abuse prosecutions.

Experience with these prosecutions will help us in establishing guidelines for assistance in multiple-victim/perpetrator cases for use in all crown offices. As we know, the more we delve into these issues, the more we find that multiple-victim/perpetrator cases actually exist and need this kind of assistance.

Some of the other initiatives to assist victims which have been undertaken in crown attorney offices include designation of coordinators for sexual assault, wife assault or child abuse prosecutions; training for crowns in the social, psychological and legal issues associated with these prosecutions; funding for part-time crowns to allow the crowns prosecuting wife assault cases to have time out of court to interview these victims; the use of screens and closed-circuit television for presenting evidence by child victims and witnesses of abuse; and the creation of a special courtroom for prosecution of child abuse cases at old city hall.

There's also an emergency legal advice project which strives to increase the accessibility of legal advice to victims of wife assault. It does so by increasing the pool of private lawyers with training in the dynamics of wife assault and simplifying the procedures needed to gain access to legal information. A victim is entitled to two hours of free legal aid advice under that program, at which point she can have made some initial determinations of what legal assistance she needs.

The Ministry of Housing has designated assaulted women as a special priority for housing programs. This gives women who have been victims of assault first access to local housing authority units, and a portion of the units in new non-profit buildings is also allocated to this group. That really deals with some of the problems



of revictimization that happen when people are forced to live in the same home.

As a result of the implementation of legislative changes to Bill C-15, limited federal seed funding for demonstrations projects associated with the legislation was made available. Two child victim/witness projects were initiated with this money in Ontario, the Metropolitan Toronto Special Committee on Child Abuse child witness support project and the London Family Court Clinic London child witness project. They've been funded by the province since 1991. They are state-of-the-art projects to prepare child victims of criminal abuse to testify in court.

They have been very successful in helping children to deal with what is often stressful and traumatic, and a review of both programs confirmed their value. Our government has extended the funding for 1993-94 and is seeking approval to permanently fund these programs, and it's important for you to know that these programs have offered training and assistance to other jurisdictions. For example, the London Family Court Clinic was very active with the Prescott child abuse prosecutions.

In addition, for many years, local coordinating committees have been formed in communities all over Ontario with all of the resources in the community that are dedicated to looking at issues of intimate abuse. These committees are there to ensure that we have an integrated and community-based response to woman abuse. My own community of London has had a coordinating committee since 1981 and has produced valuable research, evaluation of programs and initiatives training to other groups and support to other groups that are trying to do the similar sorts of things.

It is important for us to understand that unless there's a community base and a community commitment to integrate the effect of these services, we can't attain a continuum of service for victims, because very often the services, as they have tended to be offered, are offered under different auspices. So it's important for us to develop ways to have a continuum of service for victims, and that's a real issue for many, many people.

A more recent development in this area is the Metro women abuse protocol project, which is an initiative which operates under the municipality of Metropolitan Toronto through the chairman's office. Again, it's an effort to try and integrate a vast number of services to ensure that victims don't fall between the service guidelines of various services.

Last fall we introduced legislation which will be of significant benefit to victims of assault and sexual assault. The new Limitations Act will remove limitation periods for civil lawsuits in many sexual assault cases. Many of these victims have been rendered psychologically incapable of taking action within the present limitation period of four years, and we will move to enact this legislation as soon as possible.

The government has also established a process for assisting victims of abuse in provincial institutions. This is a non-court-based process which may involve the appointment of an independent fact-finder. It emphasises counselling, healing and reconciliation in addition to compensation. The reconciliation model agreement reached last year with the former residents of St Joseph's and St John's is an example of how this process has worked effectively.

In addition to addressing the needs of victims of past abuse, my ministry is working with the ministries of Health, Education, Community and Social Services, the Solicitor General and Correctional Services and the Ontario women's directorate to develop safeguards to prevent future abuse in provincial institutions and to continue with the investigations and prosecutions of past abuse.

The system can be improved. There are a number of innovative and highly acclaimed programs and policies that are already in place, but there's much more that needs to be done to enhance these services, to provide additional funding to support assistance to victims, and to reform both legislation and regulations and procedures to make them more responsive to the needs of victims.

We have identified vulnerable victims such as women, children, the elderly, the disabled and immigrant and visible minority women as a priority for resources. A wider and more consistent distribution of resources is urgently needed, if only to address the problems faced by the most vulnerable groups. The government is currently working on a comprehensive package of victims' services and policy improvements which will help address many of the needs of these groups, many of the needs you've heard mentioned by victims during the course of these hearings.

The components of this package will enhance services for victims, provide additional funding to support victim/witness assistance programs, reform legislative procedures and improve coordination and assistance to victims of abuse in provincial institutions, and I will have a further announcement to make on that in the near future.

I would like to say a few words about criminal injuries compensation. The Criminal Injuries Compensation Board is obviously one of the most important programs for victims in the province, providing compensation in the event of death or injury as a result of criminal violence.

I'm delighted to be able to tell you that despite the severe budgetary constraints and a cut of more than \$2.5 million in federal funding, we have not only been able to maintain the funding for the Criminal Injuries Compensation Board, but we have been able to increase it. The board has also undertaken some of the changes suggested by the advisory board on victims' issues to

improve the board's responsiveness to victims' needs.

Let me turn finally to the subject of the victims' bill of rights. A true test of a government's commitment to the needs and concerns of victims is the tangible programs and services it offers them. I've already described some of the concrete policies, programs and legislation this government has committed itself to on behalf of victims of crime. We will continue seeking ways of improving the circumstances of victims. That is where we intend to devote our energy. Such initiatives demonstrate the government's concern for victims' needs and interests more meaningfully and more effectively than would a victims' bills of rights.

A victims' bill of rights typically sets out the kinds of services or remedies a victim may ask for and contains no government commitment to make those remedies and services available. Victims' bills of rights such as those that exist in many other provinces may often mask an absence of resources for victims. A close look behind such bills may reveal they're little more than a cover for failure to provide adequate programs and services.

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Ontario does not lag behind other provinces in providing programs and services to victims because it has chosen not to enact a victims' bill of rights. Only one province, Quebec, has an enforceable bill of rights, and we will continue to monitor its operations.

A victims' bill of rights that cannot deliver on its promises is little more than empty rhetoric. I am much more comfortable with assessing what the government can and should provide and making those services and remedies directly available as soon as resources can be reallocated through improved systems and processes elsewhere.

Ultimately, the best way to stop violence, pain and loss that victims experience is to ensure that there are as few new victims as possible. Perhaps the best service we can provide for victims is to address the causes of their victimization and not just the symptoms.

It is time that, as a society, we start to focus our attention on crime prevention, community safety and education. Education programs for young people, the general community and professionals are integral to, first of all, identifying victimization; second, encouraging full community commitment to ending abuse; and, third, providing professionals with the tools they need to really assist victims.

I'd like to close by reiterating the government's commitment to assisting victims of crime in Ontario. This commitment has been and will continue to be translated into concrete action through the initiatives, programs and policies I have outlined today and those I will announce in the near future.

**The Chair:** Thank you very much. Mr Jackson are you ready for some questions?

**Mr Jackson:** Is it my rotation?

**The Chair:** The government members before. It's up to you. Mr Curling, are you ready for questions?

**Mr Curling:** I'll just ask a few questions of the minister. Thank you very much for coming, Minister. You put a lot of light and maybe some facts and information on this. There's a lot to digest in a short time, and your work in that area is quite well known.

The previous presenter—my questions are pretty short—complained or observed that within the police and the Solicitor General area the police were not properly trained in regard to dealing with victims. She targeted the fact and identified that money seemed to be the problem of proper training and also that the volunteers who support this cause, who support the situation of assisting victims, also need some training, and their lack of funds. There are no funds directed towards those areas. Any comments you could make on that. I know it's not in your area, but any comment on that?

**Hon Mrs Boyd:** I think the observation that in the past this was not an area that had a lot of concentration in terms of the training of police officers is absolutely right. It's really only in the last 5 to 10 years that there's been any recognition that in fact the sensitivity, the understanding, the empathy with the feelings of the victim, in fact the victim as being central to the administration of justice, has really begun to take hold, frankly.

I know when I first started in this work, when we talked about a consumer-based system of justice, we were looked at as though we were crazy, and really that's what we're talking about. We're talking about looking at things from a consumer point of view or a client point of view.

Since the initiatives first began in 1985 under the previous Liberal government, we have done a much more thorough and effective job in training police officers, not only in their initial training at the Aylmer police college but also in terms of what the police officers tend to call their retreading on occasion.

Some municipal police forces have done an excellent job. Again, I'm most familiar with London, where I participated in the training over many years. They literally have put every officer through three or four different sessions of victim-oriented training around sexual assault, child abuse, wife assault and increasingly around racial and language issues, because that is a very important part of it. I know from talking to crown attorneys and from talking to lawyers and police officers around the province that a similar kind of thing is happening in many municipal police forces. We're beginning to make that change, but there is still a need for us to constantly reward police officers who are effective in their relationships with victims, effective in assisting victims to become good witnesses, and ensure



that they get commended when they do that work.

One of the most important things we can do, when we hear of a case where a police officer has been appropriately sensitive, is to ensure that he gets a commendation for that behaviour, rather than sanctioning always those who may not be appropriate. One of the things I've always encouraged my colleagues to do in the field is to be sure the police officers are recognized, because there are many fine police officers who have developed great skills with victims but they aren't recognized as having the excellence they have. Often it takes them a longer time to do their work when they're sensitive.

**Mr Curling:** This is my last point. Ms Foster from Voices for Children's Rights spoke about that, that from the goodness of their hearts that's how the police respond. What I was saying was that there seems to be a lack of funds to direct the kind of training that's needed by police if we will only depend—and of course it's a very important factor—on the goodness of the heart of the police officer. But the professional training, there seems to be a lack of funds there. And yes, as you said, there's much more training being done by the police which started some time ago but is not yet up to the level where we could be very happy. There seems to be a lack of training in that area, and I'm just repeating what she said. I haven't investigated it.

**Hon Mrs Boyd:** We haven't been able to add to the dollars that we wanted to this year, but in spite of the fact that the Ministry of the Solicitor General had to make economies out of the wife assault initiative parts as well, it restored all the training money in terms of police training because it considers it that important and all of its colleagues on the interministerial committee consider it that important.

I think we could certainly use more dollars and use them well. I don't think they're wasted at all in that area and I certainly think it would be helpful if we could infuse even more resources into that. I guess it's the same issue as it is with many of these services, because they are new services and we were just beginning the incremental build of these services. Having the kinds of budgetary restrictions that we all face right now makes it particularly difficult to increase the services to the extent we would like to.

But I can assure you, from our point of view, we would like to do that as soon as we are able and to reallocate moneys that may now be being used in some areas of prosecuting crime for that end of the system, because we really think we spend far too much at the crisis end of the line instead of the prevention end of the line. We have to be looking at ways to change that behaviour.

**Mr Jackson:** Minister, I'm glad you cited the Quebec example, its bill of rights. They finance their victims' services in a variety of ways and they generate

considerable revenue. One of them of course is restitution orders, which are very highly the norm in Quebec courts. The second is the victim surcharge which is applied in every province, guided by federal legislation and picked up by provinces. Their rates of recovery and capture are some of the highest in the country. Why is it that they're succeeding so well in getting criminals to help pay victims' services and we're not?

**Hon Mrs Boyd:** I think the simple answer to that is that this has never been an emphasis prior to this point of view. I should tell you that in our victims' package it's very much our emphasis and very much our intention to look at what has worked well in other provinces in terms of the collection, use and dedication of victim surcharge.

**Mr Jackson:** You can't emphasize an intention. Either it's good intended or you are emphasizing. Your victims' program is not built on that; you've indicated it was prevention. But I'm trying to understand why—and I would like to get into the whole area of police, but in fairness to you, Minister, that's a Solicitor General's responsibility and I have a couple of very quick ones in there. But I would wonder, why then are judges in Ontario—and several have said, "I'm not charging a fine because it's going into general revenues."

Several provinces dedicate these revenues. That's an expression that auditors use because dedicated revenues are earmarked for the purpose to which they're charged. In Ontario we don't do that. They go into general revenues, of which—it's hard to really cause the linkage in the minds for victims and quite frankly for criminals, for that matter. Is it your emphasis or is it your intention to work in this area?

1720

**Hon Mrs Boyd:** It's certainly my intention and it will be part of the package that we bring forward, how we work with this whole issue, because I think you're absolutely right. Judges have said so directly to me, that if they could be sure that these funds were indeed being dedicated to victim services, they would feel much more comfortable about levying them.

**Mr Jackson:** If I could ask you a quick question about the Criminal Injuries Compensation Board, I asked an order paper question five years ago and I was given the specific compensation rates for Ontarians, accessed by age and by gender and by various crimes, and through those questions determined that women and victims of rape and sexual assault had some of the lowest access rates in national statistics. When I tried to get an update on that, how are they doing, the researcher to this committee was informed that they no longer keep stats in that capacity. Do you not think it's helpful, in order to advocate on behalf of women, that we can monitor in this important area to ensure that women in Ontario are not being shortchanged? Because

the purpose of these stats in other jurisdictions is to ensure that they have improved access.

**Hon Mrs Boyd:** I wasn't aware that the statistics were not being kept in that way until you—

**Mr Jackson:** Neither was I; I found out this morning.

**Hon Mrs Boyd:** —asked your order paper question. I would simply have to say to you that we would have to look at the reason why statistics that were once collected in that way are no longer. It may have to do with the freedom of information kinds of issues. I know they are collected in terms of the percentage of the settlements, the number of cases that are certain crimes. For example, if the crime is sexual assault or wife assault, we might be able to make some inferences about who the victims are, but I would like to ask the same question.

**Mr Jackson:** One very quick final question, if I may: You've had a chance to maybe peruse the bill that I've tabled for the third time. There is a section in this bill, Madam Minister, which refers to you and your ministry. Again, I'm coming back to my first emphasis, which is on the issue of opportunities for society to recapture this money from criminals instead of going to taxpayers always as almost the sole source.

One of the recommendations is, "If a person convicted of an offence derives any profit from the sale of his or her recollections..."—I'm quoting from the bill, Mr Chairman—"or from their interviews or public appearances during which the person's recollection of the offence is discussed, the Attorney General may apply to the Ontario Court (General Division) for an order that the proceeds derived by the person be forfeited to Her Majesty in right of Ontario and the judge may so order."

Now, when I found this concept it was only in one other jurisdiction. I believe one of the deputants is going to come forward to talk about this in more detail. Increasingly, governments are now looking at this, that people in this period of plea bargaining and opportunities for criminals to slip underneath the full force and effect of our laws, that there is opportunity to gain from many horrendous and celebrated crimes. Ontario has not escaped this.

Would you be willing to pursue this vigorously in our province as an example of an opportunity perhaps for us to recapture some of these moneys to put into the victim services that you are developing but are not proceeding with at the rate that you'd like them to proceed at? I'm merely trying to contribute to this discussion in terms of areas in which other jurisdictions are succeeding at a faster rate because of their intent and their interest in pursuing these matters. I just would hope that you would consider looking at these rather vigorously.

**Hon Mrs Boyd:** Quite frankly, Mr Jackson, I think

it's the most interesting part of your entire bill in many ways, and one which I have already asked the ministry to look at quite closely.

**Mr Jackson:** The one I thought you'd like would be the one about the gender preference of a victim of assault to be interviewed by the police officer. To my understanding, only three jurisdictions in Ontario have it. It started in Halton—

**The Chair:** It's getting longer and longer.

**Mr Jackson:** I appreciate that, but we have a very special guest.

**The Chair:** And we only have a few more minutes. Two speakers: Ms Harrington and then Mr Duignan.

**Ms Harrington:** Minister, I do have three questions, actually, posed on behalf of the previous participant here, Ms Foster, but first I wanted to say that I liked the last thing that you said, that you would try to focus on causes.

I just want to mention that there was a wife killing-suicide in Niagara Falls this past Sunday, and I noted in the newspaper today that there is adequate coverage that this is a societal problem. I just want to say to you that I think there has been some step forward, since I remember December 6, 1989, going to actually our city council following that and it was not accepted as a societal problem. I think now that recognition is out there, and hopefully the people will believe, as I believe, that the more equality we have for women and everyone in society, the less violence we will have against women and anyone else in society.

The three questions—I think you've answered some of them. She was concerned with regard to the victim/witness assistance program and she quotes here, "It is our observation that this program is understaffed," so I'd like to bring that to your attention. Secondly, from recommendations in this report that she gave us, she asked for the following: that the victim be notified immediately when an offender is unlawfully at large; also on page 6: that the decision registry of all parole decisions be open to the victim or the victim's advocate. I wanted your opinion on that. Thirdly, she was asking about victim empathy training for police. I know you dealt with that, but is that adequately being done? Also, what about the crown attorneys?

**Hon Mrs Boyd:** The first question you asked, "Are they understaffed?" is a hard question to answer. I'm going to try to equivocate on it. First of all, we have too few of them and, yes, in terms of paid staff within particular locations, they are not very numerous and in many cases depend very heavily on volunteers whom they train to do a lot of the court accompaniment with them and a lot of the support work.

Some are more able to attract and to maintain those volunteers. For example, up in Renfrew county and Pembroke I visited with the group that's in Renfrew



county, and many of those people have been participants in that program for four and a half years and are very active in it. Others come into the program and find it too heart-rending, can't manage and leave, so there's a lot of training aspect involved in that.

In terms of the kinds of informational exchanges, as long as we plan ways to do this that are within the freedom of information, there are ways in which we need to do it. But we need to be very clear about freedom of information restrictions and very clear about what public officials are required to do in terms of that confidentiality.

**Ms Harrington:** There is a problem.

**Hon Mrs Boyd:** It is a problem. And the last issue that you raised was?

**Ms Harrington:** About training for crown attorneys.

**Hon Mrs Boyd:** We do crown training. As a matter of fact, we've maintained our funding for that as well. It's been a very important part of the program and you can tell the difference. Those who have been through the training have been designated in terms of their ability to deal with some of the issues the victims have, and our goal is to try to train as many of the crown attorneys as we can.

**Mr Noel Duignan (Halton North):** I'd like to briefly touch on a couple of the points that Margaret brought up, I think, to deal with recommendations for Correctional Service Canada and the National Parole Board, which we don't really have very much control over. Even if we put everything in place ourselves there'd be a large gap there.

I was wondering what types of representations you've made either to the federal Solicitor General or the federal Attorney General to try to work more profitably together to get the provinces to deal with some of the large gaps—we have some real concerns in the large gaps—of information-sharing that goes on between the police forces and the correctional services and your ministry and the Solicitor General. Is there any progress being made in that area?

**Hon Mrs Boyd:** I think there is. I just came back, actually, from Quebec City, where the federal-provincial territorial meetings were on Friday. It was an extremely interesting meeting because they had not met since the fall, I believe, maybe even the summer of 1991, and yet the community of interest was absolutely very striking. No matter what government was in power in which province, we all do experience these problems and all have the same concerns about the growing lack of confidence the people have in the efficacy of the criminal justice system, and how we can do that, how we can better protect victims.

1730

We spend a lot of our time talking about the proposals that Mr Lewis has brought forward in terms of

violent crime and sex offenders. We spend a lot of our time talking about the stalker law and how to ensure that it is an effective tool in dealing with this. We agreed that we would meet again in November or December and we have quite an agenda of items which are dedicated to a better sharing of information.

The concerns about the federal corrections system are very, very deep. The lack of effective treatment is felt as a real problem by all provinces, and we certainly made very strong representations to the federal government of our willingness to cooperate to the greatest extent possible in terms of finding a much more effective way of dealing with that.

One of the things that's disturbing is that we're seeing some judges make choices about sentences that are under two years because they can get treatment for those offenders in provincial institutions which they can't get at the federal level. So some of the sentencing practices are confusing for victims. They may indeed be, in the long run, in the best interests of society as a whole and of the offender, but it certainly is a strange kind of appearance of justice.

**Mr Duignan:** I just have a quick follow-up on that. Is it possible, at your meeting in November—we're talking about disentanglement with the municipalities; how about disentanglement with the federal government?—to have one parole board for the provinces instead of two, to have one parole board deal with both provincial and federal offences?

**Mr Jackson:** Hear, hear. I agree with you.

**Hon Mrs Boyd:** It sounds like a very interesting idea. I don't know how much work has been done on it, but I'd be very happy to make some inquiries and to share any information with you about what kind of study has been done on that, because it is the sort of thing we have to do. We have to look at much better streamlining of what we're doing and much better cooperation, because right now we certainly know, from what you've been hearing here and from what I hear every day in my office, that people are not happy with the way the system is operating now.

**Mr Duignan:** That's the problem. We could do everything right here, but we still have a large gap with the federal government.

**Hon Mrs Boyd:** That's right.

**The Chair:** We don't have any more time. Madam Minister, thank you for coming and making this presentation.

**Hon Mrs Boyd:** Thank you. I appreciate it.

**Mr Jackson:** Mr Chairman, before you invite the next deputant, could I suggest to the clerk or to our researcher to pull up the recent—I referred to a committee hearing of the finance committee which, with the auditor, reviewed the activities of the Ontario parole board. We're talking about multimillions of dollars in

savings if we were to blend them.

I was shocked—I just learned this recently—that only three or four provinces have provincial parole boards. Why do all the other provinces not? So I want to support Mr Duignan's question, and maybe we can get a copy of that for any of the committee members who are interested.

**The Chair:** If members are interested, we'll do that. Very well.

**Interjection:** I think you meant government agencies.

**Mr Jackson:** I thought it was the auditor's—

**The Chair:** No, government agencies. That's where we dealt with it.

**Mr Jackson:** Okay. Well, we'll find the report. It was done in the last year.

**The Chair:** Okay. Research will find it.

COALITION FOR THE  
SAFETY OF OUR DAUGHTERS

**The Chair:** Patricia Herdman, welcome. We have approximately half an hour.

**Ms Patricia Herdman:** Thank you. Hopefully, I've timed myself well.

**The Chair:** Very well.

**Ms Herdman:** I'd first like to thank the standing committee on administration of justice for inviting me to speak today. When I first examined the terms of reference of this committee, I thought, "I don't know if I quite fit the witness category that you're looking for." But anyway, here goes.

It turns out that as I looked at the matters more seriously, I realized that what I'm really focused on and what I have now dedicated my life to is preventing the creation of victims. Those of you who know me—some on the committee do know me; they don't happen to be sitting here, most of them, at the time—know that I've been involved in justice issues for my entire adult life. I've worked to create more fair and equitable laws, and for the past five years—I've only recently completed my term—I was involved with the Elizabeth Fry Society, particularly as president of the Council of Elizabeth Fry Societies of Ontario. So I know about criminal justice issues.

As a community person, I've worked solidly to prevent the conditions in which women are placed, which create victims and create people who end up in jail. As you may know, eight out of 10 women in jail have experienced physical or sexual assault as children, and the cycle continues from that perspective.

What I'm representing today is an organization called the Coalition for the Safety of Our Daughters. I helped to co-found it in the fall of last year. The Coalition for the Safety of Our Daughters is a media action and information group dedicated to informing the public

about the known links between violent entertainment and assaults against women and children.

I believe our society should be hell-bent on preventing the creation of victims, but we're not. As a society, we're concerned about money, being entertained and not rocking the boat.

The previous speaker, the Honourable Marion Boyd, highlighted the fact that we should be addressing the causes of violence, that we should be educating our young people. I now highlight this point particularly, because we are in fact, as a society, educating our young people. We're educating with powerful tools called television, called videos, called entertainment, called virtual reality. We're educating them that violence is cool and winning and fun.

Anyone who has studied the Statistics Canada reports can tell you that through good financial times and bad, the number of violent assaults committed by young people has increased astronomically in the past 10 years. Particularly, I'd like to highlight that these children are the very first wave of human beings who have been through the video entertainment industry, who have been allowed to watch material and who have grown up in a psychic environment of violence. These children act this out.

My colleague Valerie Smith and I were extremely pleased at the response from Queen's Park regarding Dianne Poole's private member's resolution regarding slasher movies on April 22, 1993. Ms Smith and I worked for months—and I'd like to emphasize months—gathering evidence, writing letters, issuing press releases, begging politicians and contacting community leaders to garner support for the restriction of slasher movies in this province.

We presented a viewing of *Reel Hatred* at the National Film Board in February of this year. I'd like to remind you that slasher movies which celebrate the brutal, graphic depiction of the killing of women and girls were not always widely available at neighbourhood video stores throughout Ontario. They became widely available only as the technology shifted and as the Ontario Film Review Board chose to allow greater levels of violence to be passed off as entertainment.

If there were an entire genre of films devoted to the gruesome slaughter of any other group of people, based on race, religion, country of origin or ethnicity, we all know that it would be considered hate material. But hate material in Canada is legal and it's entertaining.

What is most alarming is that this form of entertainment has moved into children's games. I'm quoting here from a *Globe and Mail* article, "Night Traps is a cinematic, CD-based adventure in which the player must protect a house full of scantily clad young women from a gang of zombies armed with big hooks"; in other words, a slasher movie the kids can play over and over



again in the family rec room. Britain has taken the time out to at least restrict it to children over 15; Ontario's done nothing.

As we watch the spread of hate material against women in this province, are we surprised when we discover that female children disappear off our streets and out of our backyards? Are we surprised when boys become conditioned to take what they want even if "what" includes another human being? Sexual assaults by children against children are becoming more widespread, creating more and younger victims of violence.

Gratuitous, graphic violence is celebrated in our movies, computer video games and television shows, and women are often the central victims, although seldom the central characters. In this way the audience, young and old, is asked to identify with the killer. A mainstream example of this is *The Silence of the Lambs*. I'd like to present this question: How many people here can name one of the victims in that movie? You can't, because the victims weren't named. They were nameless and simply provided the forum through which the audiences could be entertained. But we all remember the brilliant character who bit out women's tongues and ate human flesh.

By providing abduction and killing techniques, movies are training some people to act out what they see. Experts in Canada and the United States are concerned and have been concerned for years. Not everyone who watches this is a mature adult. There are more than 3,000 studies that show that children who watch television are more prone to use physical aggression than those who don't.

As well, Dr William Marshall and Sylvia Barrett, in their book, *Criminal Neglect: Why Sex Offenders Go Free*, document very clearly how the widespread distribution of pornography has created more victims of sexual assault. Attached to this presentation is a summary of some of the studies to which they refer. I'd like to encourage each member on this committee to read the book, especially the chapter "The Link to Pornography," and then ask yourself these questions:

(1) When did our country democratically decide to allow the marketing of violent entertainment to our children?

(2) When did our country democratically decide that it was permissible to depict women as "prime candidates for murder"? That's from a video jacket marketing entertainment.

(3) When did our country democratically decide that pornographic images of women could be sold along with milk and bread and chocolate bars?

(4) When did our country democratically decide that *Hustler* could sell pornographic trading cards to our teenage boys so that these images can be bartered during school recess?

(5) When did our country democratically decide that shopping malls can put up virtual reality centres where players can point a gun and "kill," making it seem real and available to the youngsters in exciting 3-D images?

#### 1740

We must begin by recognizing that the entertainment industry is just that, an industry. Its products, some of which are particularly harmful to children, must be regulated so that the greater good of society is served. While some people, and especially those in the industry itself, are concerned about censorship issues, I'd like to remind you that the technological change in the communications industry should not render us helpless to take action to protect the wellbeing of our young people.

The Ontario Theatres Act, by providing a rating system which includes a category restricted from children and a hefty fine for theatres caught disregarding this category, already acknowledges that certain images are not appropriate for children.

The technology has changed since the act was passed. VCRs allow parents to make uninformed decisions about what they let their children watch. Indeed, as Sandra Campbell of VIVA Associates has reported in her studies, as long as the video product is in the house, the children will find a way of watching it, even if the parents didn't mean for them to see the movie. So we have young children watching *The Silence of the Lambs*, *Basic Instinct* and a wealth of pornographic films despite the commonsense wisdom built into the Ontario Theatres Act which says that children should be able to grow up without watching this stuff. But VCRs are everywhere. What are we going to do? If we throw up our hands and do nothing, we're allowing ourselves to be technologically oppressed.

The Coalition for the Safety of Our Daughters, an organization with 50 individual members and three organizations which represent a total of 200 people, has two fundamental issues which drive our lobbying efforts:

— We do not believe in censorship except for hate material and child pornography, and we believe that hate material includes violent pornography and the vicious, gender-based violence of slasher movies.

— When dealing with televisual material which would not be classified as hate material or child pornography, we are working towards a more violence-sensitive rating and distribution system and for more public education about the known effects between televisual violence and behavioural changes in the public, particularly children.

We are also working towards broadening public awareness by speaking at engagements such as this and promoting public discussion about the known links between televisual violence and violence against real people.

We are informing the public about the known effects of televisual violence on the emotional wellbeing of children. This is well documented.

We are working to have women included as an identifiable group in Canada's hate laws so that slasher movies would not be legal entertainment.

We are working to have the Ontario Film Review Board rate films according to their level of violence and therefore not permit violent fare as acceptable for children. However, we're losing our battle with this. The Ontario Film Review Board is expanding the amount of violence permitted in adult sex films.

We want to disallow the marketing of violence to children through our school systems and department stores.

We want to provide for stricter labels, and not labels that say: "Gosh, gee, this has a lot of violence against women." We want to see labels that say, "It is illegal to show this to children."

We want to force the entertainment industry to post warnings on all violent fare on ads and prior to each screening which warn the viewer about the known effects of televisual violence on the emotional health of viewers.

There are other solutions we can find, but to discover them, we must look.

I'd like to close the formal part of my presentation with a bit of news regarding the private member's resolution which Queen's Park passed unanimously this past April 22. Remember, Valerie Smith and I have been writing press releases, holding public information evenings and discussing the matter with whomever would listen: on the TTC, at the school bus, anywhere we could get someone to listen, including down at Queen's Park, especially on a weekly basis dropping a press release off with Premier Bob Rae. Finally, Queen's Park passed this private member's resolution, and we were at least pleased that someone was listening.

Did CBC Radio's Ontario Report cover the unanimous vote on April 22? No. Perhaps CBC Radio, Canada's public broadcaster, the voice of the people, didn't find the story newsworthy. That is their prerogative, I suppose, but I found it rather enlightening that CBC Radio did manage to find the time both on April 22 and April 23 to report on Metro Toronto's proposed cat bylaws.

In truth, I believe that the Ontario media particularly has gone out of its way to avoid reporting on our various activities over the past several months because they are deeply concerned about censorship and know that the mood of the public is getting short-tempered when it comes to increasing levels of violent entertainment in our popular culture.

We're getting short-tempered when we read that some writers in certain newspapers are opposed to censoring depictions of children engaged in explicit sexual activity. We are getting short-tempered when we read about serial killer trading cards and serial killer board games where the objective is to kill as many innocents as possible. We are getting short-tempered when we discover that secretly and without input from the community at large, the Ontario Film Review Board has decided to broaden the acceptable levels of violence in adult sex films. We are getting short-tempered when our film review board states that first and foremost it serves the entertainment industry and only secondarily the public at large. This was communicated to us in their response to our human rights complaint this past fall.

Let me assure you, ladies and gentlemen, that I too am concerned about censorship, but I don't think that the founding fathers of the United States, when they put forth the idea of freedom of expression as a right, had in mind the right of the movie and computer industries to sell images of pornographic violence to our children. Instead, I suspect they were putting forth the idea that a community of citizens has a right to speak about the direction in which they believe their culture, their society, their laws, should take them.

I'm here before you to say that as a citizen I believe that one important way we can reduce the number of victims is by reducing the celebration of violence in our popular culture. I thank you today.

**Mr Jackson:** Patricia, thank you for a very articulate brief and one that comes with a great deal of conviction. I don't know where to begin with this. I mean, I agree with your presentation. You took me aback with your thesis at the very end about the correlation between media coverage and fears of censorship. I want to think about that. That's an interesting concept and I hadn't really thought of it before.

**Ms Herdman:** I've got several examples that don't even include mine.

**Mr Jackson:** My experience has been mostly at the floor of the Legislature raising issues of triple X video stores in my community or the painful and completely offensive celebration of murder, the trading cards that have been brought in from the United States and things of this nature.

I've been rather dismayed that the Attorney General's office has not backed up the police in terms of their desire to cause convictions to occur. In other words, the police do their investigations as they see the law, then, once they impound a video store's materials, they turn to the Attorney General's office, through the crown, to determine if in fact they can proceed for conviction. Then the government determines that this should or should not occur, and what we've seen is a disturbing trend away from moving for convictions.



**Ms Herdman:** I'm aware.

**Mr Jackson:** So at that sort of justice/political level, we're seeing more of that, and we certainly had that experience in Burlington as it relates to the triple X video store.

I guess really, to stay focused with your actual presentation, where do you get your statistics on the increased number of violent crimes by young people? I'm aware of it, but I just—

**Ms Herdman:** Statscan. I was there two weeks ago—spent a lot of money too, copying things. It cost 25 cents a page, but I got several years' worth.

**Mr Jackson:** I wonder if it is possible if we might gain the benefit of some of that information, and even, Mr Chairman, if you'd examine what the cost was associated with gaining that information, if it was readily available to us; if it was not, that we might consider acquiring it.

But at that, I just wish to thank you for your presentation. I know there are many who support a lot of the concerns you've raised, not all of them but a lot of them. Thank you.

**Ms Harrington:** I'll be very brief, because I think most of us certainly empathize and agree with a lot of what you are saying, especially those of us who have raised children. I know my husband and I have taught school. You see the influence of television and now video and all of these very modern things on children's behaviour.

I would like to also thank you for your focus on causes and connecting up how women are treated with what is happening in our society. It reminded me, as you were speaking, of a few years ago, just about three or four years ago, when I was with the social justice committee of our local YWCA in Niagara Falls. Every year we held a public forum to deal with women's issues, and it was I believe four years ago that we had a public forum looking at the influence of pornography on how women are treated. Even this year that same committee is now making a video about women living in Niagara Falls and the kinds of influences on their lives.

**Ms Herdman:** I think I'm previewing that video on Friday. I'm not sure, though.

**Ms Harrington:** Oh, good. I was just talking to the group this past week when I was at home, so I hope to see it very soon too. I'd just like to assure you that we would like to keep in touch with you and that I see my role as dealing closely with the minister of consumer and corporate relations with regard to the issue of videos. So please keep in touch.

I believe Ms Carter has a comment.

**Ms Carter:** I really just want to say how much I agree with you. I spoke in favour of Dianne Poole's resolution and I was very happy to do so. We do seem to be in a strange situation where in a lot of ways we're making progress on equality between men and women and so on, yet we hear these things from teachers and other people involved with young children, that problems seem to be occurring at younger and younger age groups, that boys don't know how to treat girls and so on. It looks as though we're winning the battle on one hand and losing it on another in a very frightening and insidious way, because if our very youngest children are being affected by this, then that is not a very good outlook for the future.

I certainly take your point and I agree with it that we don't want censorship as such, that things that are genuine expressions of somebody's feelings, works of art or whatever are one thing, but these things are just produced for the sake of marketing violence and pornography and really do come into a different category that just shouldn't be permitted. I'd just like to thank you and say that I think you have our support.

**Ms Herdman:** Thank you.

**The Chair:** Mrs Herdman, we would like to thank you for all of your work that is directed towards the prevention of violence against women. Thank you for coming today.

**Ms Herdman:** I just have one closing line, to get the last word. This is from Criminal Neglect: Why Sex Offenders Go Free. It was in his closing paragraph. I quote from Dr Marshall and Sylvia Barrett. "A society that permits public expressions of contempt for women can only expect that women will be victimized."

**The Chair:** Thank you.

The committee adjourned at 1753.







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### **Substitutions present/ Membres remplaçants présents:**

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Frankford, Robert (Scarborough East/-Est ND) for Mr Winninger  
Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



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Monday 7 June 1993

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Standing committee on  
administration of justice

Comité permanent de  
l'administration de la justice

Victims of crime

Victimes d'actes criminels



Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
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### **Renseignements sur l'index**

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 7 June 1993

The committee met at 1559 in committee room 2.

## VICTIMS OF CRIME

Consideration of the designated matter pursuant to standing order 125, relating to victims of crime.

**The Vice-Chair (Ms Margaret Harrington):** I'd like to call this meeting of the standing committee on the administration of justice to order. This afternoon we are dealing with standing order 125, regarding victims of crime.

## BARBRA SCHLIFER COMMEMORATIVE CLINIC

**The Vice-Chair:** I would like to call forward Marina Browning, who is the legal director of the Barbra Schlifer Commemorative Clinic. Would you like to go ahead.

**Ms Marina Browning:** Thank you. As was just indicated, I am legal director of the Barbra Schlifer Commemorative Clinic in Toronto. I'm actually acting legal director of that clinic at present. I am the senior staff lawyer at the clinic.

The Barbra Schlifer Commemorative Clinic is a unique service, a unique program, in my understanding, in Canada in that it provides, under one roof, legal counselling and cultural interpretation services exclusively to women who have been victims of violence, specifically victims of partner assault, sexual assault and adult survivors of childhood sexual abuse and incest.

I have been practising law in the province of Ontario since 1985 in a number of areas I would basically describe as comprising social justice law. I have also been a victim and a survivor of robbery and sexual assault. In fact, I was sexually assaulted by a serial attacker in the city of Toronto in 1985. I had just been called to the bar at that time and had just started practising law. I lost my very first position as a lawyer in private practice at that time because my associate thought that perhaps I needed more time than the 10 days off that I was asking for to recover from having been brutally, I would say, sexually assaulted. I literally took a leave of approximately 10 days, after which I was handed my walking papers, so to speak, so that I could take all the time off that I wanted.

I think that sort of reaction points up very clearly the types of societal attitudes that women are still fighting. I think if women like myself are fighting this within the legal profession, certainly women who are less socioeconomically privileged as I am are fighting this to an even greater degree.

I have to say that I've seen at first hand, having testified at the sexual assault involving myself, what it

is like to be a victim of crime, sitting on the stand and having a lawyer like Clayton Ruby representing the accused in a particular matter. I can tell you that my training as a lawyer and my knowledge as a lawyer did not assist me at all in sitting on the witness stand and being a victim of crime who was required to testify orally as to my victim impact statement about the effects of the assault on me.

Very clear to me also were the differences in the way police officers and crown attorneys treat women who come from varying socioeconomic and cultural backgrounds. In my particular case, this matter was quite highly publicized in the media in Toronto. The police put innumerable resources on it. They treated myself and other women who were attacked by this assailant with the utmost dignity, respect and courtesy because it was a high-profile matter, frankly, because police careers were being built on how they responded to this particular matter. I would have to say that I was one of the fortunate few in the province who had the kind of attention from police and crown attorneys directed to my case compared to other women who have had to go through the criminal court process.

When I came here today, I intended to actually speak in a more formal matter and not really to refer, other than in passing, to what I've just indicated to you. However, I have the sense that perhaps there has been a greater level of informality at these proceedings than I might have been aware of. I think it's important to put my own personal experience out on the line.

As a result of my own experience as a survivor of sexual assault, I became very involved in legal work that dealt with women who have been victims of sexual assault and domestic violence. I also coordinated, in 1987 to 1988, a court victim/witness program in what was then the provincial court (criminal division) in North York. In that capacity I've had considerable experiences, as throughout my entire legal career, with crown attorneys, with police officers, with all sectors of the criminal justice system, as well as with therapists, counsellors and support advocates of women who have been survivors of violence.

I have thought many times, and I still do—it's a daily part of my experience as a lawyer, as a woman, as a survivor of violence—about what changes in the system, and most particularly in societal attitudes, are necessary in order to assist survivors of violence in proceeding through the maze of legal so-called remedies available to them which, in the end, rarely achieve any semblance of either societal justice or personal justice for the victim and/or her family.

First, let me say that an adequate review of the current weaknesses and injustices in the civil, criminal, family and administrative tribunal systems as they affect victims of crime—and I have interacted in my work with all of those systems and assisted victims of violence through all of those systems—would really require more time and another forum than what I have available to me today. I will thus limit my comments to the points that are of most pressing importance to me in the context of these hearings today.

I will say, then, at the outset that the existing provincial programs that are designed to support and aid victims of violent crime and their families still remain, in spite of their admirable intentions, woefully inadequate to the task of practically and comprehensively addressing the entire spectrum of needs that arise for a victim of crime in the three- to five-year period following the infliction of violence upon her.

I refer here specifically to two provincial programs: the court victim/witness program operated under the auspices of the Ministry of the Attorney General and the Criminal Injuries Compensation Board program. I know that this committee has heard submissions, I'm sure by this time, regarding both of those programs, so I will not go into detail, but I'm sure you have already been told that with respect to the court victim/witness program there are insufficient sites for these programs in the province. There are probably no more than 10 to 12 sites in the entire province in which this program operates.

There is insufficient staffing; there is insufficient resourcing; the court victim/witness coordinators in those criminal courts in which they do operate have extremely high case loads. If you think of all of the women alone every day in Metropolitan Toronto who are victims of crime who are proceeding through the criminal court system as victims and that in each of the courts in Toronto where this program operates there is only one coordinator dealing with referrals from the various crown attorneys who operate in those offices, I think you will see clearly that there is completely inadequate resourcing in this program.

I'm also concerned that this program does not operate independently of the crown attorney's office, so there may sometimes be a conflict between what the victim of crime requires and what she's able to get because of the coordinator's ties to the crown's office, and there are sometimes conflicts that arise there. There are also problems with subpoenaability of court victim/witness coordinators.

With respect to the Criminal Injuries Compensation Board, you have already been told, I would think, of the difficulty, the lack of recording of decisions of the Criminal Injuries Compensation Board, the lack of availability to the general public of those decisions and the reasons, the basis on which they make their deci-

sions, the rebuffing, in essence, of the principle of women being represented by legal counsel or a legal advocate at Criminal Injuries Compensation Board hearings if they wish to and, depending on the panel you get when you are present at a hearing, the great variability in attitudes towards sexual and partner assault and women who are victims of those crimes.

I myself again experienced being a victim before the Criminal Injuries Compensation Board and I have to say it was a horrendous experience. If the investigating police officer had not been present with me at my hearing to essentially give voice to what I, as I think a fairly verbal and expressive lawyer, could not give voice to because of the trauma that I had experienced, I do not think that I would have gone through the process. In fact, in retrospect, because of the negative attitudes that were expressed by the panel at my own hearing, I would not highly recommend a victim of crime proceeding through that process. I would give pause to recommending her proceeding through that process and perhaps being retraumatized.

I have to say that at the Barbra Schlifer clinic we have very limited resourcing ourselves. We have women every day who approach us about what their legal options are with respect to having been victims of crimes of violence. I have to say I'm very blunt with the women who come to me. I tell them that if they are expecting to achieve personal justice in the criminal justice system in particular, they perhaps should put that notion aside. There's got to be something else compelling them and driving them to go through the horrendous process that they have to go through in order to even go to the police, seek to have a charge laid and proceed through that process. I have seen women and counsellors at our clinic have seen women who have been destroyed by the process of proceeding through the criminal court system.

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It would take much greater time than I have available to me today to express what I see first hand in my role as a legal advocate for these women in the criminal court system and what they experience. I recently, however, to mention one case in particular, assisted a woman who was a victim of a brutal sexual assault and attempted sexual assault by a man within a 10-day period. I recently saw her assailant acquitted in the Ontario Court (General Division) because the judge, although he preferred her evidence to the accused and found her to be a credible witness, was not given sufficient data or evidence presented by the crown attorney in a case to help him understand what a victim goes through when she is experiencing rape trauma syndrome.

There is woefully inadequate training of crown attorneys in the criminal court system on post-traumatic stress disorder, rape trauma syndrome, child abuse



accommodation syndrome. They refuse to call expert witnesses.

In this particular case, I was present throughout most of the trial. The judge cried out to the crown, almost begged the crown attorney, to present evidence that would help him understand why this woman stayed in the same apartment as her assailant for approximately three weeks after the two assaults. This woman was paralysed with fear. She was not able to leave the apartment and escape from her attacker. There is a lot of accumulated evidence as to the paralysis that a woman experiences when she has been a victim of rape. The crown attorney refused to call that evidence, even though the judge pleaded for it. I believe the case was essentially lost on that basis, and that unfortunately does not form an appealable error of law. This woman saw her attacker get up, walk past her in the courtroom and leave, a free man, because the crown attorney did not adequately do her job.

There are numerous problems with the police still laying charges in matters—undercharging, in other words—where circumstances would give rise to a charge of aggravated sexual assault, simply charging sexual assault alone. I'm sure you've heard probably numerous stories about the insufficient contact between the police and the victim, crown attorneys and the victim, through the process; crown attorneys proceeding with pretrial arrangements, plea bargaining arrangements, without consulting the victim; proceeding with bail hearings not notifying the victim; not notifying her of the conditions of an interim release or bail release; of the lack of involvement of the victim: Even though she has the right to put forward a victim impact statement, a crown attorney still has the right to edit it and present it in whatever form he or she may desire or to not even present it as evidence at all.

There are numerous, numerous problems in this system, and I'm not presenting nearly everything that I wanted to present right now, but let me get right to the point of what is a primary concern for me today. I believe that the victims' rights bill that has been presented in the House and still has been considered off and on in the House for the last four years is a very good start to enshrinement of basic rights that victims ought to have when they're proceeding through the civil and criminal court systems.

However, I believe this bill could go even further, and I believe that what is needed in this province is the right for a victim to have party status in not only civil matters but in criminal justice matters and in quasi-judicial proceedings such as disciplinary proceedings under the Police Services Act or what will soon be the Regulated Health Professions Act.

Victims have a right, they have an interest in the process, and that right is not always adequately protected by the prosecutors or crown attorneys in these

cases. I've had firsthand experience of that in a matter I'm assisting a complainant with right now in a hearing at the offices of the College of Physicians and Surgeons. Where the interests of a victim and the prosecutor diverge—and there will be numerous instances in which they will diverge; for instance, whether a victim's medical and psychiatric history ought to be permitted to be produced and released to defence counsel and called into evidence.

There are numerous instances, which most prosecutors will acknowledge, where their interests and the interests of the victim will diverge. In those instances, a victim ought to have a right to retain her own lawyer, to have full independent legal representation. She ought to be granted the right to be a party at that point in the proceeding and for her lawyer to be a party to the proceeding. Whether that person is necessarily a lawyer or not is not particularly important, but she needs to have a legal advocate at that point.

I believe we need to give serious consideration to such a right in this province before we can hang any substance to a victims' bill of rights or any of the other improvements that we are trying to make to the judicial system in Ontario. Thank you very much.

**The Vice-Chair:** Thank you very much. Mr Winninger first.

**Mr David Winninger (London South):** You've certainly made a number of very good points today. I just wondered if you were aware that when the Attorney General appeared before this committee last week, she had acknowledged that it's only within the last five to 10 years that there's been an increasing interest in sensitivity to the rights of victims of crime. While she did reiterate some of the fiscal constraints we're under, she did emphasize at that time that money for training, both of police officers and crown attorneys, has not been cut back.

I guess my question to you is this: Given the level of trauma that you've experienced and obviously that your clients have experienced before the justice system, is having an independent lawyer for the victim really going to go very far towards solving that trauma? Right now, in practice, it's the prosecuting attorney who acts on behalf of the crown but indirectly ensures that justice will be done in terms of the crime committed and the victim who suffered as a result of the crime. So if you have a sensitive crown attorney, do you really need an additional lawyer in court? Because if that were the case, any traumatized victim of a robbery or a physical assault, a non-sexual assault, might argue the same case.

**Ms Browning:** I've had a lot of expertise in this particular area, and I will say that I have had crown attorneys and prosecutors in quasi-judicial matters, quasi-criminal proceedings, personally tell me that they know that in terms of their protection of the public interest, there will often be a conflict. They take the role



that they are neutral individuals who are not there in any sense to advocate on behalf of the victim.

I've had a classic example in a matter I'm dealing with right now, where a prosecutor for the College of Physicians and Surgeons of Ontario who is prosecuting a matter of sexual assault and professional misconduct—negligence, actually—regarding a doctor has been very supportive of the complainant, my client, having standing in this matter when she would normally just be considered a witness, although the crime occurred to her, and of me having party status. That's because he realizes that because his role as a prosecutor is to present all evidence that comes before him whether it is favourable to the victim or not, he can only go so far in representing the victim's interest. Even the defence counsel in this particular matter has been quite agreeable to the victim in this matter having party status.

I do believe that to give a victim, for instance, as in the proposed victims' bill of rights, the right to representations before a crown attorney on matters of sentencing, the right to representations where bail conditions are being set, but not to permit her to have an independent legal advocate who is able to make those representations for her, gives no teeth, no meat, to those particular provisions.

**Mr Winner:** I was going to say, though, that once the finding of guilt has been made, isn't that when the victim impact consequences are made known to the court and when the crown attorneys can then perhaps adopt a more positive role?

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**Ms Browning:** That's if you get a conviction, which is actually quite rare in sexual assault cases, as most crown attorneys will tell you.

I'm talking about that whole period from the time the police attend at a victim's home or the time a victim goes into the police station and the matter of laying of charges is being considered, through that entire process up until trial, which can cover a number of months. During that time there can be numerous legal proceedings or matters affecting the criminal court proceedings that a victim needs to be involved in. So I'm talking prior to that time.

I'm not saying that a victim should always automatically, necessarily, have the right to independent legal counsel. I do believe that a protocol, guidelines, need to be established for what circumstances a victim of violence ought to be able to have the right to full independent legal representation. I think that can probably be done quite amicably between the crown attorney system and the private bar.

**The Acting Chair (Mr Len Wood):** Thank you very much. We want to move on. I believe Ms Harrington has a very brief question.

**Ms Margaret H. Harrington (Niagara Falls):** Just

a short comment. First of all, thank you very much for coming and bringing up some very fundamental ideas, such as that there's a problem in society's attitude, and how to change this is the question. I just happened to be speaking last night to a woman from Niagara Falls discussing some of the concerns of what happened there a week ago in the killings, and her statement was just this: "There is no justice for women." I said, "I'm the only woman on the justice committee, so we're going to try and change things very slowly."

You mentioned giving victims party status as one direction to go. Maybe if we had 50% of our lawmakers or legislators women, it might help as well.

**Ms Browning:** Yes, that's very true. If anyone on this justice committee wants to really get a sense of what women go through in the criminal court system, all they have to do is go into any one of our criminal courts and sit for a week in sexual assault matters. I consider myself to be quite an optimistic individual. I think a week sitting in criminal court matters in which women are victims will lead you to see how very unfair and unjust the system is.

As I say, the women I've seen go through the system are incredibly courageous women. They are battling numerous odds. Personal justice is very rarely achieved through that system. For women to go through that system as often as they do go through it, knowing that at the end there probably will not be a conviction in the matter and that if there is a conviction that sentencing will probably not be appropriate to the circumstances, that takes a great deal of courage.

**The Acting Chair:** Thank you very much. I'm sorry that we're going to have to cut in. Mr Murphy has a question.

**Mr Tim Murphy (St George-St David):** Thank you very much for coming and for your presentation. I appreciate it.

You made reference to a case recently in General Division where you said that the judge was asking for expert evidence and because of the absence of it being introduced by the crown, the accused was acquitted. Is that correct?

**Ms Browning:** It wasn't sufficient, in the judge's mind, to move the case beyond a reasonable doubt.

**Mr Murphy:** I'm just trying to understand how the evidence of the affect on a victim related to the view—I mean, it was a sexual assault case?

**Ms Browning:** It was a sexual assault case.

**Mr Murphy:** And the evidence of the impact on the victim was insufficient to establish the facts of the assault?

**Ms Browning:** No, not the impact on the victim. There were certain things around the circumstances of when the assaults occurred and what happened in the period immediately after that were problematic for the

judge. He basically, as I said, indicated in his judgement that he preferred the evidence, that he found the victim to be more credible than he did the accused. However, to move that finding on his part to the standard of "beyond a reasonable doubt," he needed to be adequately reassured as to why the victim didn't leave the premises within a certain period of time after, and that evidence was not offered by the crown attorney.

**Mr Murphy:** Okay. Do you know why that was the case?

**Ms Browning:** The crown attorney has essentially indicated that she did not feel that evidence was particularly necessary or useful to her case. She did not think she could find the necessary expert testimony in order to explain the victim's response in those particular circumstances.

**Mr Murphy:** Are there a number of experts within, for example, Ontario who have a lot of knowledge in this area who could have provided testimony at the trial?

**Ms Browning:** There are experts who are available. However, I just want to bring up another point. Right now I think there is a chill operating among therapists, medical and non-medical, who might well testify in civil or criminal proceedings involving crimes of violence, because of the disclosure rules; I mean essentially because of the Supreme Court of Canada decision in Stinchcombe and the fact of what the police officers and crown attorneys have to disclose in terms of receipt of medical or psychiatric evidence about a victim.

I know therapists and counsellors right now and psychiatrists who are not really keeping notes because they are so concerned about those notes being subpoenaed by either the crown or the defence and coming into the hands of the defence. So whereas there are experts available, I think right now there is a real problem with the willingness of certain experts to come forward.

**Mr Murphy:** Do you think some guidelines perhaps—or even amendments in some cases, although some of it might have to be federal amendments—provided by the Attorney General to crown attorneys in terms of attempting to make distinctions, justifications before judges in terms of certain disclosure requirements might be of assistance in that regard?

**Ms Browning:** It may be, but my understanding is with—we're expecting a report from the Martin commission any day now. The Attorney General's office is anticipating a report from that commission, which has been a matter of a lot of speculation among those of us in the legal profession who deal with these matters.

I anticipate that disclosure rules as they stand right now are actually going to be tightened in almost all

cases rather than opened up and made more variable in cases involving sexual assault.

**Mr Cameron Jackson (Burlington South):** Ms Browning, thank you very much for your presentation and covering such a far-reaching range of issues that all come back to what I believe was your central theme, that our courts have not served women in matters of sexual assault and violence well and that perhaps a victims' bill of rights is one of the steps that this Legislature could engage in to help advance or correct that course of action.

To take the case you used, the specifics of the case you used, I'd like to go away from that because that's highly risky since it's a current case, but—

**Ms Browning:** Well, there's no appeal being sought in that particular case. The appeal period has passed. So you're fairly free to be able to speak about it if you wish.

**Mr Jackson:** I've had occasion to go to court on behalf of some of my constituents in similar matters and have been quite concerned about the level and the response and support from the bench. I'm reminded of Justice Vannini and the court in Sault Ste Marie and some of the offensive language and statements that were coming from that judge and the need for reforms in that area, which we're beginning to see, but they're the tip of an iceberg.

We have had judges in this province make statements in court such as, "I know you beat your wife but this time you may have gone a little bit too far." That sort of acceptance of domestic violence coming from the judge, let alone a crown attorney, is quite an experience for a woman who is looking for justice and not finding it anywhere from anyone.

If I might, instead of asking you a question, I just wanted to indicate for the committee's benefit that the bill that is before you, the second bill, was modified extensively through the collaborative efforts of Mary Lou Fassel, who is the legal director at the Barbra Schlifer clinic. I'm not a lawyer by trade, but I was very much guided by her input and her contribution to this bill.

Although it's not a complete bill, it raised several of the issues which were of concern to the directors of the Schlifer clinic, Pat Marshall at Metrac, the Metro Action Committee on Public Violence Against Women and Children, and others, that the bill does deal with certain issues around sexism and violence and our court system and police responses and others.

Without quoting some of the comments from Mary Lou Fassel, I just, for the record, wanted to indicate that that clinic has had—and in no way an endorsement of the fact as to which political party brought it in or which political party has turned it down, but rather in the best interests of women in Ontario to advance their



legitimate rights and not be revictimized in the process of seeking justice.

**The Chair (Mr Rosario Marchese):** Mr Jackson, we're near the end. Were you going to ask a last question or are you done?

**Mr Jackson:** I was going to give the last word to Ms Browning, because I felt her presentation was most compelling.

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**Ms Browning:** I'm not certain what I would say in conclusion, except to say that I was in a proceeding recently where I'd been counsel to a complainant, and she actually heard defence counsel get up and say, in response to a request on my part to receive standing in the matter, that she did not have an interest in this particular matter as the complainant. As the victim of a sexual assault, she did not have an interest.

Again, the issue that the interest of a victim is adequately, in all circumstances, represented by the prosecutor, is clearly, clearly not the case. Most prosecutors with any sensitivity at all will acknowledge that. Again, I would urge very much that the idea, the principle, of a victim being given party status in certain circumstances in civil proceedings, criminal proceedings, quasi-criminal proceedings and administrative proceedings be considered.

It would require a tremendous amount of cooperation among various legislative authorities, it would require amendments to numerous pieces of legislation, from the Statutory Powers Procedure Act to the Criminal Code, but I think it is something that ought to be considered, and until that matter is even discussed openly among committees like this, I think victims in this province have still much, much too far to go.

**The Chair:** Ms Browning, thanks very much for coming today and giving us your presentation.

**Ms Browning:** Thank you.

CANADIAN RESOURCE CENTRE  
FOR VICTIMS OF CRIME

**The Chair:** I'd like to call Mr Newark to come forward. Mr Newark, welcome to this committee. You have half an hour and you may decide to leave some time at the end for these kinds of questions.

**Mr Scott Newark:** Yes, sir. I should indicate at the outset—I listened to the last presentation—I'm a former crown prosecutor. I was a prosecutor in Alberta for about 12 years. I left about six months ago to go to Ottawa. I head up the organization called the Canadian Resource Centre for Victims of Crime, which is funded by the Canadian Police Association, as well as a publishing company. I am also the general counsel with the Canadian Police Association.

I think, if I'm not mistaken, the brief that I see being passed around, or briefs—I'm sorry, I've been on the road for about 10 days. I didn't have time to write

something specifically in relation to this committee hearing.

Much of what I do is in relation to federal legislation and proposed federal policy, but obviously there is a tremendous impact of provincial administration of justice on how the service ends up being delivered, if I could put it that way.

The comments in relation to the victims requiring counsel of their own I thought struck right at the heart of the matter, because in many ways, I suppose, it defines in one sense why I ended up making the very difficult decision to leave the crown's office. I enjoyed the job very much, but increasingly I found myself finding it harder and harder to explain the criminal justice system to victims of crime in the sense that explaining meant justifying, because increasingly I found what I was trying to do was justify the unjustifiable.

It's been said by many different people in different ways, but the essence of it is that often the real victimization of a victim begins once the criminal justice system takes over. Now I am by no means certain that is axiomatically so or that a complete system overhaul from top to bottom is necessary as much as it is rethinking some attitudes and, frankly, opening the process up a lot. I use the specific example about the necessity of a victim having counsel independent of the crown to make the point.

I remember, when the victim impact statement came out, somebody asking about the victim impact statement, as to whether or not that should be put into evidence. My response was, "Well, really, I think if I'm doing my job as a crown prosecutor, you probably shouldn't need it."

My experience is in relation to the crown in Alberta and not in this province, and I think I can tell you that, at least from the police perspective and the crown perspective and the courts, things are getting much better. We still have a very, very long way to go.

The victims' rights bill that I had a copy of, I examined it, I've seen it before, and I must admit in the portion that is section 2 of the bill, essentially the description of the kinds of entitlements that victims have, or should have, the real question you want to ask yourself I think is whether that should be in the form of a statute or whether that should be the cornerstone of policy of the Attorney General's department, because, at least in my perspective, that is certainly—and I think I'm probably displaying my bias when I tell you that I think it should be simply the departmental policy.

The reason, for me at least as a prosecutor, as a lawyer I guess, is that if there's no—I mean, what happens if somebody violates the provisions? There's no consequence for it, you know? Statements I would rather see enforced.

My question would have been similar, Mr Murphy, to some of the area you started pursuing about specific cases. I can only guess that the area that it may have caused some problem in would have been in relation to the question of consent. There must have been a differing version in relation to the facts and somebody had to make a tough credibility call on the sense of what took place, and something required some explanation.

The other question I would have asked is, so what happened? You know, I take a fair number of calls from people increasingly all across the country who are victims of crime, not only dealing with my specialization, which has become, by default almost, working in the parole system and usually with the federal institutions, but also in getting people to work through the system, and the essence of it for me seems to be more getting access to information and recognizing that it's not some other system out there that people literally get imposed on them.

One of I suppose the realities that I've noticed more than anything else is that often victimization, and particularly physical victimization, imparts a sense of helplessness, and one can imagine that simply from the act itself. But when you add to it that you deal with a system where you haven't got a clue what's going on and that to a large extent you run into people who don't really feel it's part of their job to sit down and talk to you and, to be fair, don't have the time to sit down and talk to you, aren't provided with resources to sit down and talk to you, you can imagine how that compounds that sense of helplessness and how it also makes it much more difficult along the way when you see a result that suddenly comes out because no one's bothered to sit down and explain it to you.

I'm glossing over when I say no one's bothered to. There's a real question in the sense of departments of the Attorney General, for crown attorneys, and Solicitor General's departments recognizing that, for myself, for example, as a prosecutor, it's as much a part of a prosecutor's job today—sorry?

**The Chair:** I'm sorry. I was distracting you. I was pointing the finger at somebody else.

**Mr Newark:** Okay. It's as much a part of a prosecutor's job today to take the time to sit down and talk to that child witness who's got to go on the stand in a couple of days, and I'll say that not only as a matter of sensitivity but as a matter of, frankly, practicality, because the odds are a lot better that I'll get the evidence that's going to be necessary to get the truth to come out, and that is the overriding function of the crown prosecutor.

That sometimes gets overlooked because it is very difficult when you're dealing with people who've been victimized by crime, but our system is still based on that notion of the crown or the state and the offender and we recognize that there has been something that's

done to a specific individual.

I'm on a committee in Ottawa that is dealing with crime prevention and I had a very strong disagreement with a sociologist who was talking about how the system is evolving into its being between the offender and the victim. I think we make a terrible mistake if we allow that process to occur, because in reality what goes on is that each and every one of us is affected when people are victimized by crime. We don't want to lose sight of that.

My suggestions really are that, if you're going to make procedural amendments or policy amendments, you make them so that they open the process up so that people, frankly, get to talk to the crown attorneys, and if they don't talk to the crown attorneys or they find a crown attorney who won't talk to them, then you attempt in your policy to make there be a consequence for that, because it is part of the crown's job in doing that.

Similarly—and I can take it down to the next level—we're recommending a creation of a national operational panel that will deal with situations that require an understanding of how we enforce the laws. I testified last week on the anti-stalking bill in Ottawa, and we can pass all the laws we want in relation to a subject like that, but how are we going to enforce it? At 11 o'clock at night when somebody comes to the front counter or phones in, what happens?

We have to make sure that the police, whose job it is to enforce it, fully know all the powers they have under the Criminal Code, understand the powers of arrest, what we can do with peace bonds right now, what we can do in relation to questions of bail. How do we conduct bail hearings?

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There have been a couple of cases since I've got to this province that have involved what I think would be fairly called deficient procedure on bail hearings. So one of the things that we're recommending and we intend to do is to do just exactly that: have an operational panel, that is to say those people who actually do the work—the working police, the working crown, justices of the peace, provincial court judges who actually do those hearings—and figure out what are the best procedures that we use across the country and develop some national standards in relation to them. I can simply advise your committee, and I suppose the provincial government ultimately, your participation in that would be very helpful, because those are some of the ways that we'll actually get some things done. In one sense, it doesn't attract as much attention, necessarily, as an anti-stalking bill, but in the long run it may provide infinitely more protection.

I want to very quickly go through a couple of points, though, that I think are quite important in relation to current provincial areas of responsibility. Clearly, both



the Attorney General and Solicitor General departments have the ability to influence what goes on on a day-to-day basis in the criminal justice system. From an Attorney General's department that makes a decision on second-offender notices, for example on repeat drunk drivers, obviously there's a real impact that the provincial department can have no matter what the Criminal Code says.

Similarly, a provincial Solicitor General's department that makes a determination of zero tolerance for individuals beating women or harassing women, or also indicates to be much more practical about it, we view this as a priority. When you get a complaint from somebody on what we would call a domestic breakup situation, we view that as a priority that you take the extra time to sit down and talk with that person and not simply hand the pen and paper and say, "You take the statement, you know, and let's see what happens out of it," because we may get better information. We may actually be able to provide something for the crown attorneys conducting bail hearings so that somebody who should be detained in custody on the secondary grounds is detained in custody.

I read of one case, or had it referred to me, actually, second hand. There was a complaint because the police, I think, were going to have to terminate surveillance on a woman's house who had been the subject of a series of complaints and she apparently felt, and the police agreed, that she needed pretty round-the-clock surveillance. Our response was, "Why was she in custody?" That was the effect of it: "Why was she in custody? Why wasn't he in custody if we felt that was so necessary?" So it is extremely important. It's the hands-on things that the province can do.

I very much am a believer in the quality of information as being a key to the quality of decision-making. I think the Jonathan Yeo inquest showed that as well. The Christopher Stephenson inquest showed that as well. But I suppose what it really comes down to is that, if I could put it this way, Ontario actually is a shining example of getting at the truth in instances that are sometimes embarrassing. I commend you to keep your system in the sense of having your coroner independent of your Attorney General.

I'm frankly ashamed to say that in my home province we have circumstances that here, I have no doubt, would have prompted a coroner's inquest. In Alberta we call them fatality inquiries. They are at the discretion of the Attorney General and we can't get them ordered. Similarly, I could provide you with and show you some physical examples of the federal government's policy in relation to openness and accountability; it isn't great.

Tomorrow morning I have to give a speech to all the wardens in Canada and all the National Parole Board members, and I'm planning on making the point with some of that material. I think it's going to be a quick

appearance. But at least in Ontario there have been some significant understandings and access to information through the coroner's inquest process. The proposals that came out from the Solicitor General, I think two weeks ago, out of the Stephenson inquest are a testament to that.

So much of us, frankly, have a lot to learn from Ontario about that particular aspect, but I can't think of anything singularly more important than keeping the access to that kind of information available. I would say that specifically to victims, as I did earlier, about trying to make that system open so that people understand that it is in fact part of your job to explain what the hell is going on.

I used to try to say to people sometimes—and I remember on one particular case sitting down explaining with the victim's family why I was going to take a plea on a manslaughter instead of on a second-degree murder charge, and explaining that the way our system worked, and I also happen to philosophically believe in—it was my decision to make. That's what they paid me the money for. But I wanted to hear what they had to say. I was not going to somehow allow my decision-making to be done by other people, but I very much wanted to hear what they had to say.

That's the way, in my opinion at least, the system is supposed to work. It is not by any means an easy job, being a crown attorney, as I'm sure you can imagine, but you probably make it harder on yourself and the system itself suffers when victims are shut out of the process.

I actually have some thoughts about legal counsel in relation to victims, because one of the things that I found, frankly, nothing short of disgraceful of the federal government's conduct in the Stephenson case was the fact that all of our tax dollars went to pay for counsel for the National Parole Board of Canada and for Correctional Service Canada. The people who didn't get their counsel paid for were the Stephenson family. In fact—he has since changed his view—the Solicitor General at one point even said that he thought the family should trust the system.

That is still an issue before the Canadian Bar Association, but it strikes me that you could very easily amend your legislation—I believe in Ontario it's the Coroners Act—in a couple of ways. If somebody dies while he's in custody, by the way, there's an automatic inquiry—and I believe it's so in Ontario; it is in Alberta—into the circumstances, how the means of death came to be in the position to inflict death. My personal suggestion is that it's not a bad idea that if somebody who is out of custody who would otherwise be in custody is involved in the causation of death, the same thing should occur. Why not?

Secondly, I think there should be a recognition that people who are victims not only have status but have a

right to state-funded counsel. I want to give you some suggestions a little bit about maybe how we can find some dollars to do it, because, as I think probably everybody, no matter what province you're from, recognizes, there's a dollar crunch in front of us.

One of the things that I think we take a little advantage of is—as you know, there's no right as a generic right, at least not in any province I'm aware of; it may be different in Ontario—for victims of crime for legal aid. That may be different here. However, that often is something that is very real. People require counsel and not just simply somebody who's been physically assaulted. If your home's broken into and you've suffered a whole lot of damage, you want to try to get some money back for what you've suffered. You'll know ultimately when you try to enforce that order, if one is made by the court—guess what? You want to sue somebody? Get a lawyer and pay for it yourself.

My suggestion is that what we should perhaps be doing is looking at the victim fine surcharge, and instead of taking it through general revenue systems, why don't we create a separate account in legal aid, a separate victims' account in legal aid, that has access to those kinds of dollars? Make it self-funding. If the money comes through, the money comes through. If it's not there, it's not there.

I brought with me some legislation and I'm in the process, as part of what I do, of trying to collect the national area of activity in crimes compensation boards and victims' legislation across the country. The only one I was able to grab at the last moment was the one from Prince Edward Island. I have it here and it has some suggestions in relation to that as well. I'd be happy to supply that, following, to the committee. You may wish to take a look at that as well.

Secondly, there's a new bill pending before Parliament right now on proceeds of crime. As you may know, there's potentially a large amount of money. Right now, the federal government is sitting on about \$65 million without a mechanism to return it. The question of course is going to be, who's going to get the money? My idea or my thought was that in reality the dollars seized—obviously, it acts as some degree of deterrent, taking some of the profit out of crime. But also, it was to fight crime as well: Let's take the money from the people who have those proceeds and attempt to fight crime. You've got to appreciate that the proceeds of crime are more than just simply motor boats and machine guns; they also include investments in what would be otherwise called legitimate businesses.

The scheme that is currently proposed in the legislation—I must admit, I had visions of the federal government running restaurant chains across the country because this actually involves—you have to take assets and, logically so, you have to manage them in advance of conviction. I think there should be a tad more

emphasis on disposal of assets and getting the dollars and putting them back into the hands of the police forces.

What I want to suggest to you as a provincial Legislature or members of a committee of the Legislature is that the question raging in Ottawa is, shall we give the money to the municipalities, to the police forces or back to the provinces? The general wisdom perceived is that we're going to have to give it to the provinces because they'd scream bloody murder if the money went somewhere to an area or a jurisdiction below provincial jurisdiction.

My suggestion is that maybe it's time we start to rethink some of the ways that we've already done things in this country, about how we efficiently spend dollars, because I'm sure you'll probably agree that the more stops that dollars like that make along the way, the more likely it is that there's going to be less to ultimately do the job in the end. I suspect that Canadians and people in this province would welcome that kind of pragmatism on the part of any government.

You'll see, in the material that's there, that we also made a recommendation in relation to costs against accused in certain circumstances. I think that is also money that could go into awards ultimately, crimes compensation boards or in relation to legal aid.

#### 1650

Perhaps one of the largest ones, and if there's any defence counsel on the committee, you may not appreciate this—one of the things that came out of the Stinchcombe case or a reality that came out of the Stinchcombe case that the last witness talked about, which is disclosure, is that I think we waste a tremendous amount of time and money in the criminal justice system today on unnecessary preliminary inquiries. Much of what preliminary inquiries were required to do was give, in effect, disclosure of the evidence to somebody facing an offence. It's now a constitutional right of an individual to have that disclosure. Plus, in our system, we have very wide penalties available so that, for example, on a commercial break and enter, you can get 14 years. Nobody gets 14 years on a commercial break and enter. Because of section 11, I believe, of the Charter of Rights or one of the subsections, if you're liable to imprisonment for five years or more, you have an automatic right to a judge-and-jury trial.

My suggestion is: Why don't we make it five years less a day? You don't have to worry about the judge-and-jury trial. We'll amend section 553 of the Criminal Code. Now, I appreciate the province can't do this, but amend section 553 of the Criminal Code, make it an absolute jurisdiction offence. In other words, it stays in provincial court. There's full disclosure as a result of Stinchcombe anyway, the penalty becomes less and we save time and money and, I suspect, a tremendous amount of money in legal aid budgets. I think we're



going to have to come to those kinds of solutions to look for the dollars to be able to make some of the adjustments that we're speaking of here.

In relation to crime compensation, perhaps I can just close on this. Again, I have limited familiarity with your procedure. I can tell you that the couple of encounters I've had with people who are victims are not particularly positive. The response essentially has been, and again I suppose it's in the sense of the attitude that is conveyed by it—there was a lady whom I had hoped to be able to bring with me; we weren't able to work it out. Her claim was originally lost when she first made it; she got back in touch and got it worked out.

Right in the body of the letter is the notation, "Because it can take from 6 to 18 months from receipt of a claim until you receive the order of the board, I would ask that you not call me about the progress of your claim for six months."

It's not the only one that I've encountered. Almost every single letter that comes out like that has something that says that: "I'd ask that you not call about the status of your claim."

With the greatest respect, this is not the swine flu control board. You're dealing with people who have been traumatized by crime, and the last thing they need is to have some kind of insensitivity displayed. Like it says, "Don't call us; we'll call you." Now, I appreciate that this board no doubt is backlogged. That may well be a commentary on the entire state of the criminal justice system, but that is not the appropriate attitude to take, and I would suggest that somebody, frankly, should be responsible for that. In much the same way, if there's a crown attorney that's not doing their job, they should be responsible for it.

I have gone rather quickly, but if there are any questions, I'd be happy to attempt to answer them.

**The Chair:** We have about nine minutes. We'll start with the government members first. Mr Winninger, three minutes or so.

**Mr Winninger:** I do have a question, but we started with the government last time.

**The Chair:** We did?

**Mr Winninger:** I'm happy to go again. We usually rotate.

**The Chair:** Mr Murphy then, go right ahead.

**Mr Murphy:** One of the things that I did before I came here was do some criminal work, and I did both crown attorney and defence counsel work, and one of the things I found was that especially, and this is more so in provincial court, but it's a victims' right bill in general and there's a whole gradation of offence in which frankly victims are treated badly.

**The Chair:** Mr Murphy, do you want to move closer to the microphone?

**Mr Murphy:** Sorry. One of the things that I found was often the case was that the preparation of witnesses, the counsel—there was a lot of it that was left to the police forces. Crown attorneys, very often, provide the file the morning of the night before. It's not their fault; they're just too busy to do otherwise, especially in the provincial court jurisdiction.

I'm wondering, both in terms of the degree to which that becomes an obligation by default of the police forces, what you'd recommend in relation to that and also in terms of what you'd recommend, reflecting your experience as a crown yourself, in terms of how, given the resources the system has, we can more effectively manage that process so that some real attention is paid to the victims.

**Mr Newark:** My first point is if somebody had routinely handed me court briefs the morning of the trial or the night before the trial, they would have heard about it in spades or their detachment commander would have heard about it, because my experience is that all crown attorneys, the ones whom I dealt with, want to do a good job, and that's not a good recipe for doing a good job. And I don't think it's necessarily an answer to say, "Well, for example, in Toronto it's a big city; that kind of stuff happens."

There's also a lot more crown attorneys and there are a lot more police officers, but part of that is necessarily rethinking, and this is where the administration of both the Attorney General's department and police forces is involved, what our priorities are.

I use the same comment in relation to dollars. I don't think there's a new pot of money necessarily, but we have to rethink how we choose to spend our dollars, including, and to use the example of a police officer, recognizing that it's part of the police officer's job on the investigation to take the time to interview the witness so as to get an accurate—not at the nanosecond of the police arrival—statement from somebody. The one that I used in relation to a crown attorney, I very much was of the view that that was my job as a crown attorney, was to do that.

I have never been much of a fan of the approach that says, "Look, you know, we're all overworked." We all know we're overworked. I think you'll find that among police officers and crown attorneys as well, they're really not doing the job in most cases for the money, it's because they happen to believe that what they're doing is making a difference. It's using the time, I suppose, more intelligently and more productively with a focus towards victims' rights. I don't want to underestimate; that may well mean hiring more crown attorneys. That is quite conceivable. My suggestion is that if we're looking for dollars from that, streamlining the Criminal Code in relation to reducing legal aid budgets may be an appropriate source of funding.

**Mr Murphy:** If I can follow up—

**The Chair:** One quick question, Mr Murphy, otherwise we won't have enough time.

**Mr Murphy:** You focused on, and I think I agree with you, let's look at the enforcement, how are you going to do it. In the context of accountability for crown attorneys and perhaps even police forces in relation to dealing with victims, counselling, making sure they get the right story, making sure they understand what's going on, what do you see as the actual ways to enforce that for crown attorneys and police officers?

**Mr Newark:** I think I can probably best speak in relation to crown attorneys and not police officers, if you don't mind. I think obviously there has to be a political will on the part of the people running the department, and ultimately the minister, that this is important. The best thing, in my judgement, that will make that so is the notion of openness and access to information as to how a case is actually run.

It's very easy when you're dealing with somebody who is probably intimidated to begin with, because of the nature of the system, what's happened to them, to write a letter in legalese that doesn't really say very much. If you have a commitment at the top to having that kind of openness, you're going to go an awful long way there, which does sort of underscore the difficulty if all you're doing is having this as policy as opposed to law, although the law would have, as I see it, no particular sanction if a prosecutor violated it.

**Mr Jackson:** Thank you, Scott, and welcome. There was a reason why I requested that you and your organization be here. I've been very impressed with the work that you've been doing nationally and in your home province of Alberta and I've very much appreciated the occasions on which we've been able to talk about these issues.

You've covered so much in the course of your brief presentation, and there are a couple of areas I'd like to focus on. We're not going to have time, so what I'd like to talk to you about, if I could, is, the Attorney General was before us and indicated that victims' rights in many of its manifestations are highly symbolic, and we've received conflicting evidence of that. The Jonathan Yeo inquest specifically articulated the need for a victims' bill of rights. The previous deputation focused in on that as well. The minister did say however, though, that in Quebec their system was working.

We further went on in the course of that deliberation to discuss the revenue-generating techniques that our current legal systems have available to the provinces to implement but aren't necessarily taking full advantage of. I wonder if you could, with your national insights, help focus very directly for the committee on a couple of examples—you did touch on them briefly—of where there is revenue in the system that can be specifically directed towards victims and the services and, as well, the reforms necessary to bring the balance back into our

judicial system.

**Mr Newark:** Yes, and perhaps what I can even do is leave with you the Prince Edward Island statute, Victims of Crime Act, and the attached regulations to it, if I can just ask the clerk to make a copy and send it back to my address.

In that legislation, what it directs is actually that the victim surcharges levied both under the code and in relation to—they do it for provincial offences as well, and it goes into a separate account in the consolidated fund, with the money to be used for the victim programs. That is something that I'm not aware—at least in my home province I don't believe that is so, in Alberta.

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I can also tell you that in Prince Edward Island they have a very, very similar statement of principles to the bill that's before the committee today. As principles, they're almost identical. They're actually not as thorough as the one that's in the bill here.

The other thing is that there is a victim services advisory committee that is established, and I think one of the principles that's quite good about it is that it includes somebody from the judiciary, crown attorneys, court clerks, probation services, law enforcement. In other words, it's a selection of individuals along the way. It says, "community organizations and the general public." I don't know. My hope would be that this would include victim organizations, because I think that would be a severe flaw if it didn't have that.

Again, I'm not familiar with your legislation, but I believe the upper limit in terms of compensation is higher than it is in Ontario. Perhaps the most germane principle is the one that seems to separate the dollars coming in and put it into something specific. That, in the very least, is an advancement.

**Mr Jackson:** Scott, pardon me for interrupting, but are you aware that some judges have gone so far as to suggest that it's inappropriate in their view to be charging the victims' surcharge if in fact the government in this province—we're talking about judges in this jurisdiction of Ontario—is not dedicating the revenues specifically to these services?

I know this would be a whole level of dialogue between what's occurring at the judicial level as opposed to—but the process of not dedicating the revenues, the feds set up the blanket legislation, each province implements it, but they give them the right and responsibility to do that the way they see fit.

**Mr Newark:** I can give you three examples. Two are direct in my province. I've had judges say: "I'm not levying a tax on criminals. If the government wants to levy a specific tax, it can do it. I'm not going to collect it for them."

I was just in Nova Scotia and I'm aware of other



judges in Nova Scotia, from conversations with them, who may not have used as colourful language but the sentiment is still the same. At least from what we would call hearsay, but other comments made to me, I'm aware that's the case of comments from the bench in this province as well.

**Mr Winninger:** Thank you, Mr Newark, for coming today and sharing your wisdom. Just a short response and a question. On the issue of preliminary hearings, from time to time it has been suggested that preliminary hearings be abolished, and certainly with fuller disclosure, the length of those preliminary hearings could be obviated, but you might agree with me that in many cases preliminary hearings actually prevent a trial from following.

**Mr Newark:** Yes, there are some that this occurs in. In fact the amendments specifically that we'd contemplated were not to abolish all preliminary inquiries. It was still in effect to leave the option for those to occur, but I was thinking about the much more routine ones in relation to the kinds of offences that—

**Mr Winninger:** I think I understand. Just moving along, you suggested earlier in your presentation that rather than introduce a victims' bill of rights, it might be more appropriate that the Attorney General has a policy that addresses those victim rights and has some meaningful enforcement of them. Just out of curiosity, I had a chart prepared which lists all of the rights and entitlements that exist in bills of rights for the provinces that have them. I notice Alberta isn't here, but I guess it doesn't have a bill of rights.

**Mr Newark:** Actually we do. Your chart's wrong. We do have a bill of rights.

**Mr Winninger:** Maybe the chart isn't complete yet, but it does have BC's, which is enacted but not proclaimed.

In any event, what I see here is that there are agencies in Ontario that are responsible for protecting the kinds of rights that are addressed in other provincial bills of rights and in some cases go beyond that, but the issue always is, are the employees in the agencies giving full effect to these principles and are these agencies represented across the province as opposed to a few of the larger centres? I think it's acknowledged that more work can be done in those areas.

You mentioned your concern about the Criminal Injuries Compensation Board and the kind of form letters going out suggesting that a victim wait six months for further news. That may be one example of where an agency perhaps isn't carrying out its mandate as effectively as it could, because we've heard there's a lot of trauma around these applications to the Criminal Injuries Compensation Board and perhaps a more timely response would be warranted.

The question I wanted to ask you, however, is this.

Assuming that there was a fund to pay for legal aid for victims separate or out of consolidated revenues or what have you, I'm just wondering how far the role of the victim's lawyer would extend. Would it include cross-examining a criminal accused? Would it come in only after a conviction is registered, or would it be more passive than that? I'm just curious because I see us perhaps descending more into the realm of private justice as opposed to public justice, which we all have an interest in, as you said earlier.

**Mr Newark:** Well, if I can answer, and perhaps at first a comment as well too about whether it's best left in the sense of policy, my concern about that—and I say this from having worked in a department that I'm sure had mountains and mountains of policy; I sometimes used to refer to them as the chains of command, as opposed to the chain of command—as long as it's enforceable and as long as there is a consequence if you don't follow it, as long as people have access to the information and understand it, sure. Obviously, if you make it statutory, it gives it a greater sense of importance. But as long as that's there, whichever way works.

I think one of the very real things you want to try to avoid is the institutional self-interest, if I could put it that way, that tends to spring up within bureaucracies, either public or private, about protecting the interest of the bureaucracy as opposed to necessarily carrying out the mandate of what the bureaucracy is.

In relation to the comment about the Criminal Injuries Compensation Board, I must admit I would have used a little blunter term in describing whether they were fulfilling their mandate or not. That, to me, is somebody who doesn't understand his mandate who wrote that letter. However, to answer your final question—and again I'm probably revealing my bias. It was funny. After I left working as a crown—I'd worked for about 12 years, and it was not a particularly amicable parting of the ways—I worked in private practice for about a month before I went off to Ottawa to do this. In the time frame that I was there, in a month, I had three people who were victims of crime privately approach me and ask if I would represent them. Personally, I think that's a disturbing trend. When I say "represent them," I don't mean represent in the sense of going and trying to sue or something like that, but it was literally to monitor the crown.

Personally, and again I appreciate my bias, I think a much preferable route is to make sure that our crown attorneys are doing the job that we want them to do, because I take your point that in the middle of a criminal trial, no, I don't think it is appropriate that there be someone else conducting the cross-examination of an accused person. In the middle of a criminal trial, the person conducting that should be the person representing all of the people of the province of Ontario, that is, the crown attorney. I appreciate that may not be shared

by everybody, but that is essentially my view about the system, that we don't need to reject one of the cornerstones or the essence of the system; we need to fix it.

**The Chair:** Mr Newark, thank very much. We appreciate the presentation you have made. I think most members have found it very informative.

1710

#### CANADIANS AGAINST VIOLENCE

**The Chair:** Next is Debbie Mahaffy. Welcome, Debbie. You've seen more or less how the committee functions. If you would just give enough time for the members to ask questions, it would be useful.

**Mrs Deborah Mahaffy:** I kind of wish what I was going to say hadn't been passed out to you already, because in two minutes I think you have consumed it. I would like to thank Cam for giving me the chance to speak before you. As difficult as it may be at times, I think we have to give up a heck of a lot to try to teach others what being a victim is really like. I certainly never and you probably never thought that anything like this could happen to you. But it does happen. Learning how to live with it and how to cope with it is another thing that has no deadlines and no time on it.

Each of us is different, and I guess I should just say at the outset that I still am not yet back to work. There are days when I think I would like to be, but then there are days when—I just call them now Leslie days. They're down days, I cannot go on and I am completely debilitated to do anything, and that even includes housework.

There are several topics I would like to mention. I've spoken to quite a few victims since June 1991 when Leslie died, and over 30 of these families I've spoken to, some out of the province, haven't been as lucky as I have been to receive the amount of counselling I have had the opportunity to have, or the treatment I've had from my community.

Immediately after a family is told that a loved one has been murdered, the victim's family slowly becomes emotionally, psychologically, physically and financially bankrupt. I would put it in that order, where we've pretty well accomplished everything and now we're looking at the bankrupt part. When you go from a two-paycheque family to a one-paycheque family, it's kind of difficult, and the other part is that I'm glad it was me who couldn't hold up my end of the budget, and not my husband. If that had been the case, our house would be gone.

I was very fortunate in that we were informed immediately of the Criminal Injuries Compensation Board and we did receive a pamphlet which outlined the basic guidelines and information. I, of course, didn't have much interest in it, but luckily my husband could take care of that and get it sent off. We can't remember where we received it from, whether it was victims'

services, the funeral home or the police, but it certainly was one of those three that provided this pamphlet to us.

The other families I've talked to, especially 10 I can think of where we particularly got into the topic of the compensation board and the program—three of those families each had a child who was murdered well over a year ago. They had heard nothing of the victims' compensation board and certainly had not applied. I provided them with both the telephone number and the address for them to contact.

Another mother I was speaking to recently was told, when she contacted the board to get her pamphlet or to get her information: "What you are feeling is normal grief. Therefore, you would not qualify for compensation." This mother had lost her daughter, who was 17 years old. She was murdered in her own home. The process of informing victims' families must be more clearly defined and carried out, and not left to chance and not left to this insensitivity of this particular person on the telephone. I'd like to ask that the Attorney General's office look at the definition of "normal grief." Surely, murder is not now considered in some way or in any case a normal way to die. Death by murder is never normal.

Yet in this country, grief and sorrow experienced are far more complicated by the nature of police routines, forensic routines, burial choices or lack thereof: Sometimes you're not allowed to cremate, and maybe that is your wish, to be cremated or to have your child or your father cremated, and that is very disturbing. The choices are few. Perhaps the press involvement also further complicates grief as well. As to the individual circumstances of murder, each circumstance, each murder is quite different, although to the surviving members there's no easy or uncomplicated way for their loved one to be murdered.

The guide from the compensation board also mentions that the board may compensate for funeral expenses. I would like to point out that the maximum dollars allowed for the funeral, for the burial, does not even cover a minimum burial or funeral. We certainly did not have an elaborate funeral for our daughter, and there certainly is a lot of outstanding cashing of bonds and whatever to pay for her funeral.

The remaining and several extra costs that are incurred at a time like that are left to the burden of the victim's family, through no fault of their own. It should be given that in the minimum compensation, there would be a marker provided for every victim. I can't imagine that a child or a relative or a loved one not at least have a marker, and there's no compensation for that or even a minimum towards it. Not having a marker or a burial, to be recompensated for those items—those totals will not change. Those maximums remain the same. I wish that would be reimbursed right away.



The compensation board does not assist financially in counselling of members of victims' families. If counselling is not covered by OHIP, the family must pay the hourly fees, which begin in the range of around \$70 an hour. I do know families in southern Ontario that are travelling over 80 miles for counselling, paying by the hour. They're not covered by OHIP and the husband is still not back to work.

I would like to recommend that this same government which pays for any counselling to the accused or convicted may also afford equal rights to us, the victims' families. If effective counselling cannot be found, or the costs make counselling cost-prohibitive, then the healing process is prolonged and perhaps the return to work is even delayed. Counselling for victims' family members should be considered compulsory, necessary unless refused by the victim's family member.

I think there are a very small number of people who can recover, who can deal with the grieving process of a murder without the help of a counsellor. Oftentimes, your counsellors may be your family members, and if that process breaks down, that connective work breaks down, then there's no one for counselling.

Loss of pay due to absence from work because of the death should be paid immediately upon the family member's return to work and with the appropriate documentation from the employer. I had a letter from my employer. I was on a contract to the end of December. I do not see any case why that could not have been paid right away. As to estimations from that point on—I am a supply teacher—how many days I may have worked could have been calculated on past employment and could be worked out later, but definitely the amount of pay that I would have received on contract could have been paid right away. Similarly, my husband missed, I don't know, approximately six weeks from work. When he went back to work at that time, I do feel that maybe that salary could have been recompensated to us. If he should have a relapse, then look at that when that happens.

The additional financial stress due to the loss of income further complicates and often retards the healing process as well.

In order that the Criminal Injuries Compensation Board be assured that funds would be available more readily to victims' families, the courts and judges therein must comply with and charge the surtax on all fines levied in the courts. The compensation board and the Attorney General should demand that this revenue go directly to victim services and not into the general melting pot of the Treasurer of Ontario to be spent on roads or hospitals etc. I guess we've heard that quite a bit.

I agree wholeheartedly with any proposal that would see that the perpetrator, once convicted of a crime, never receives any profits from the crime, be it by the

sale of his or her recollections concerning the offence or interviews or public appearances that they may grant.

I would hope that the Attorney General would apply to a judge at the Supreme Court or district court for an order that such proceeds to be derived or proceeds that have been received by the perpetrator be forfeited to the crown to be used directly by and for victims' compensation.

You may be aware of my national petition asking for an amendment to the obscenity clause of the Criminal Code, specifically to prevent the undue exploitation of crime or the glorification, celebration and profiting from violence and crime; for example, murder especially. Any entrepreneurial gimmick based on murder and violence, whether it be killer trading cards, serial killer board games or video games—to profit from murder is obscene in principle and does present a weak argument for the freedom of expression. To profit from crime, the murder/violation of another human being, is quite a repulsive reality in Canada, not only to those who have experienced the effects of murder directly, as we have, and the violence that others also are aware of, although have not experienced.

If profiting from sensationalizing, exploiting and glorifying murder and crime in the press, news media, books and movies cannot be declared obscene, and this country chooses to continue to sacrifice and make victims pay the ultimate price for this freedom of expression, then perhaps the Attorney General and the Finance minister should get involved and reap some of that profit.

#### 1720

In the next paragraph I say, a little bit facetiously, that if everything produced in Canada has the PST and GST added, then I suggest that a VST be considered as well: a victims' services tax. If we can't have the profits from murder and crime being banned, then let's tax them, taxing the profits made because certain individuals have committed crimes which have inspired other individuals to create games, to write books and make movies which can be clearly classified as undue exploitation but still cannot be declared obscene. A VST of a sizeable amount would guarantee the compensation board income, and then perhaps in turn the victims of violence would receive realistic compensation and in a more appropriate time frame.

Last week when I was here, I certainly agreed with the comments from the Attorney General when she stated that in the budget there might be more emphasis put on the prevention end rather than the end result of the crime. After the crime is committed, the costs are horrendous. I ask that the Attorney General consider the forensic sciences budget. This is perhaps one place where, if there are proceeds floating around in revenue, they certainly should consider the forensic sciences budget.

The tests that are required to be done cannot be accomplished in a reasonable time frame because of staff and other shortages. With delays in waiting for forensic results, delays occur in court and court costs rise. The identification of sexual predators would be accomplished in a more acceptable time frame as well.

My daughter was murdered, unfortunately, for the entertainment of her killer or killers. I do not think her murder should, nor do I want her murder to entertain or profit anyone else in any way in any country. There is no comfort or privacy in knowing that others can violate our family further without our knowledge or permission. I worry and am concerned for my daughter's friends, for my son. It is just a matter of time before her friends or he will be able to rent a video, read a book or watch a movie made for TV about her murder. I might add there as well that you can change the names, you can change the places, but everyone will know who we're talking about.

The courts and the justice system provide little privacy for the families of victims and the accused. Recently, more people have taken advantage of the right to present a victim impact statement that could be read into the court record prior to sentencing and also at a parole hearing. I thought it was progress. I am having second thoughts now, when I'm in that position. The intimate details that would be contained in a truly from-the-heart impact statement would become the fodder for any and all insensitive authors or movie directors to twist, embellish and exploit, all in the name of entertainment and the freedom of expression.

I've had a great deal of difficulty writing an impact statement. Each time I do, where do you start? Some of the things that I feel greatly impacted by and got down on paper very quickly are the things that I also would not like to read in a book or see in a movie.

If any case involves a sexual assault charge, I do not think accuseds' names or pictures or victims' names or photographs should be published before the case has been dispensed by the courts. I would like to see legislation amended so that the administration of justice would not be hampered by the intrusion of the press or by any private business or by any individual. Privacy is one aspect of a victims' bill of rights that is of tantamount importance, but in reality, almost impossible to guarantee unless the issue of privacy is emphasized in legislation.

It is alarming to know that, had my daughter survived her ordeal, she would have been protected, no name published. Her younger brother and her friends, all minors, would not be known to the public, and all of our family would have been protected and given privacy. That right to that privacy should not die with her.

The trauma experienced by her family—our family—the trauma of every victim's family, deserves to be recognized by the justice system, and that is by afford-

ing us some privacy.

I am not, nor is any victim's family, asking for more rights. We are all asking for rights that we've never had. Victims have faces and names, as does the perpetrator, and we should have at least equal rights to the perpetrator. Thank you.

**The Chair:** Thank you, Debbie. Mr Jackson, we'll start with you.

**Mr Jackson:** Debbie, thank you very much for coming today. I know that when we first approached you about coming, you had very strong mixed emotions about coming today and that is becoming self-evident. But what may not become self-evident is that the issues you've raised about victimization—you are only partway through the process, whereas some of the victims who've been before us are further along or have completed the system's treatment. I use that word loosely.

I'd like to explore your concerns about your surviving sibling, your son Ryan, and what life's going to be like for a younger brother and a family member. I know that's difficult and I know I have your permission to raise it. I think it's very important that the committee understands that you're an adult and a mother. You'll be able to deal with some aspects of what you're about to deal with later this month, as a matter of fact, in our court system, but your son Ryan doesn't necessarily have the same choice.

**Mrs Mahaffy:** No, he doesn't. We had tried right from the very beginning to protect him from a lot of the details that we knew about her death. He is only nine years old and he does go to a psychiatrist. I work with her to try to help him with the details that we know up to now. Basically my son and I now have an agreement that when he's old enough to ask the question, then he's old enough for the answer.

I've learned that from the police. They've pretty well treated us the same way I think. When I'm ready for the answer, I'll ask the appropriate question. This is a little person who—I find myself in a situation that now I have no control over his questions or over the information that will be made public.

During one conversation with him I asked him, "It sounds like you do have a question," and he said, "Yes, I do." "Do you want to ask it now? Do you want the long answer, the short answer or the middle-sized answer?" His response was: "No, mom, I'm not ready to ask the question yet. I'm not ready for the answer."

For a boy who does not travel freely in his own home, who is not able to have a shower in a shower stall unless I am in the vanity area of the washroom because of faces looking in the shower; for a boy who cannot go up to his own bedroom, second-floor house, he's too nervous; for a little boy who cannot go to the basement of his own house alone, these are just some of



the things. We have not even dealt with what's yet to come.

There have been incidents. The school has been wonderfully supportive in talking to the principal, talking to his teacher, and the principal speaking with the staff in trying again to protect him just from general conversations of other children. Certainly the dinner table conversations I have no control over in anybody's house. What other children will learn in their house will affect my son. I don't think he is emotionally or psychologically ready to hear anything at the point that we're at now.

**Mr Jackson:** I know this is very difficult for you. I know there are many things you'd like to share with this committee that you can't at the moment. One of the issues I'd like to pursue is that initially your reaction about the media and the intrusions to your family was a very serious issue and nothing had prepared you for what was about to happen there.

There has been an interim order placed by the judge, but it would appear that the American media won't have to honour that. Our investigations into this matter will be sufficient for the Americans to report aspects of the case. They will have deemed to have broken the law when they cross back into Canada, since this case will be tried in a Niagara Falls court.

Did you want to share a concern with the committee with respect to how far our courts may or may not go with respect to understanding and respecting the concept of your need as a family for privacy?

**Mrs Mahaffy:** I think there's a lot of interest at stake in this case and I think it's of ultimate importance that justice be served. To do that and to do that guaranteed, that justice be served, it looks as though my rights will have to be sacrificed. It is of great concern to me that another country would not consider and stand by and comply with our laws. I think that's probably about all I can say at this point.

**Mr Jackson:** Okay. Thank you very much.

**The Chair:** Do you want to ask one more question, Mr Jackson?

**Mr Jackson:** No, Mr Chairman, I have had occasion to spend a fair bit of time with Mrs Mahaffy on her concerns and I would like to allow the other members of the committee an opportunity that they wouldn't otherwise have.

**The Chair:** Very well. Thank you. Mr Winner?

**Mr Winner:** Just briefly, thank you for your helpful suggestions today. You made a general comment about victim impact statements. I would be very concerned if victim impact statements did not come before a judge because of a concern about privacy, because I think they play a very unique role in sensitizing the judge to the impact on the victim before sentencing or disposition. I'm wondering whether the kind of order for

a ban on publication of evidence during the trial and whether an order sealing the record would go a long way to meet your concerns and ensure that the relevant evidence did go before the judge.

**Mrs Mahaffy:** I think there might be a way to work that out. I have to leave that to others as well. Certainly it is important to make the statement and to have it there at the time of sentencing, but I also recognize that at the end of the case, if a ban is put on, if the ban is lifted, then access is afforded to anyone to the court record, and that is a concern to me. If there's a way that a judge can protect that information, I certainly would be very interested.

**Mr Noel Duignan (Halton North):** Just very briefly, I think we all can sympathize with what you're going to experience beginning this month, but the problem I have is that when it's all over, it's not over.

**Mrs Mahaffy:** No, it's never.

**Mr Duignan:** From video rights to movie rights and to this particular company in California that produces these cards. I have a real problem with this company. I've written that I'm really opposed to it, and they take delight in writing back to you and saying "freedom of expression" etc. They even in fact have me on their mailing list and won't take me off. Every time they put out a new series of cards they write me and give me this letter saying, "Look what we're doing now." I think that tells you something about society and I'm really, really opposed. We need to do something about that, what I don't know.

**Mrs Mahaffy:** They're now producing cards that are of accused. There's a Canadian who has not even been convicted already that's on the card. But I think this is not about the freedom of expression as much as it is the freedom to make money, the freedom to profit. I think that's really what the argument is about.

I don't know how that petition is doing right now in Parliament. It was sort of very positively talked about a month ago, that legislation would be amended in the obscenity clause to at least help out in the area of the undue exploitation of crime and horror and to take out the separation of the sex from the violence. I don't know how that's doing, but even if it doesn't pass the charter challenge, to me I think there's no better issue to challenge the charter on than the issue of obscenity, and if that's the way it goes—

**Mr Duignan:** I know I was really offended when I got the letter from that particular company with the latest cards. That goes beyond—

**Mrs Mahaffy:** I guess you've seen the cards of the hologram electric chair and the Rodney King beating card as well?

**Mr Duignan:** Yes, that's just—

**Mrs Mahaffy:** What's next? A gang rape?

**Mr Duignan:** It's incredible.

**Mrs Mahaffy:** That's right. I'm afraid we don't need to emphasize our negative human qualities to the extent that we are by perpetuating this violence. I think when we start producing trashy novels or sensationalizing in this way, we are also perpetuating violence.

**Mr Duignan:** I couldn't agree with you more.

**The Chair:** Mrs Mahaffy, we know how painful it must be for you to talk about the tragedy that's befallen you and your family and we all empathize with your suffering.

**Mrs Mahaffy:** Thank you.

**The Chair:** We thank you for coming and talking about your personal experience.

**Mrs Mahaffy:** Thanks.

**The Chair:** Unless there are any other matters, we'll adjourn.

The committee adjourned at 1735.



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### **Substitutions present/ Membres remplaçants présents:**

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### **Also taking part / Autres participants et participantes:**

Jackson, Cameron (Burlington South/-Sud PC)

**Clerk / Greffière:** Freedman, Lisa

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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 8 June 1993

# Journal des débats (Hansard)

Mardi 8 juin 1993

Standing committee on  
administration of justice

Comité permanent de  
l'administration de la justice

Victims of crime

Victimes d'actes criminels

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman





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### **Renseignements sur l'index**

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 8 June 1993

The committee met at 1545 in committee room 2.

## VICTIMS OF CRIME

Consideration of the designated matter pursuant to standing order 125, relating to victims of crime.

ERNEST TANNIS

**The Chair (Mr Rosario Marchese):** I call the meeting to order. I'd like to welcome Mr Tannis. Mr Tannis, we have half an hour. We usually leave 10 or 15 minutes at the end to allow members to ask some questions, okay? You can go ahead.

**Mr Ernest Tannis:** I would like to thank Mr Jackson and Mr Chiarelli, who I think were instrumental in inviting me here today.

Three years ago, I had the honour of being a public witness to the same committee on alternative dispute resolution when someone asked me, "Why is Ernie, the attorney, leaving his law practice in Ottawa to come to Toronto?" I remember that session and I remember how much I enjoyed it. I remember Mr McGuinty in particular, who shortly thereafter passed away. His comments in Hansard, which I got from his son's office today, really inspired me to continue to share the movement of alternative dispute resolution generally and in the province of Ontario.

I don't know if this is the Andy Warhol 15 minutes of fame that is going to happen in the next few minutes, but I do remember what Mr Nizer said, that if you can't strike oil in 15 minutes, stop boring. There's absolutely nothing boring about the topic of alternative dispute resolution. In fact, as I was saying to Mr Jackson just before the meeting, one thing I want to share with this committee in the next few minutes is the enthusiastic adoption of dispute resolution in criminal justice matters in the province of Ontario and elsewhere, some of which the committee members may be aware of.

I can also report to you that I've been on three international panels since that session three years ago, and it's with great pride that I talk about the efforts of the province of Ontario, which is becoming recognized in the western world as a leader in this field.

The three ways to approach this are to start out with an attitude that I come with, that's reflected in a well-known picture some of you may have seen that's been hanging in my office for 18 years. It's two farmers fighting over a cow. One farmer's pulling the head, the other farmer's pulling the tail, and right in the middle there are two lawyers milking it. I would say to my clients, if you want to litigate, be my guest.

What's exciting about dispute resolution at a grass-roots level is the understanding that in a criminal justice

matter, it has equal application. What's even more exhilarating for this committee and for our province and for our society is that since this session three years ago, we now have in the province of Ontario some real, live applications of these things.

The literature from years ago, from Harvard University in the last 15 years, that predicted the value of alternative dispute resolution to improve the socioeconomic fabric of society is now taking shape. What I said in the committee meeting three years ago, and what I've learned from people who have studied social movements of the 20th century, is that just like we had to eventually build roads and highways for the vehicles which became accepted, it will take political leadership—and hopefully, it is soon—to start building the roads and highways for dispute resolution in our society.

I looked at this series of questions that the justice committee put forth to look at and, as a general framework, I was particularly interested in questions 3, 4 and 14. Perhaps question 14 could be the springboard for my brief comments: In the view of the witnesses, is there a balance between how the provincial justice system treats the victim of crime as opposed to the perpetrator of the crime? If not, how may a balance be established?

The first balance, in terms of the observations of people and the movement of our legislation and people's desire for justice, is to provide the balance of options for problem-solving approaches, one of them being, in the area of victims, VORP, victim-offender reconciliation programs. These programs are being used more widely throughout the continent and in Ontario. I can give some specific examples of their application in this province.

One book that's being handed out is this little pink book called A Tribute to Conflict Resolution Day of Ottawa-Carleton. You mentioned presenting a brief today, but I figured the last thing the world needs is another piece of paper from somebody. Instead of reinventing the wheel, I wanted to bring to this committee's attention an event that took place some years ago, in 1988, at the Canadian Government Conference Centre, thanks to Mr Ray Hnatyshyn, then Minister of Justice; this was the only non-government group to get the Canadian Government Conference Centre. We launched, with Woodroffe High School, Canada's first high school mediation program. When you look at this book—as I understand social movements, it requires intellectual assent—this was a litmus paper test that this



is the urge of people throughout for these methods. Every level of government was represented.

One of the events that happened at Woodroffe High School which would be of particular interest to this committee, as an example, is that there was going to be a fight at Woodroffe High School. There were a number of students involved from two schools, about 40. There were police cars. There were going to be juvenile delinquents. There were going to be victims and offenders. There were going to be records. All 800 students knew there was going to be a fight, but fortunately Woodroffe had installed a mediation program and the students mediated their differences. That was the same week that Halifax had a problem which got national headlines about young people and the problems there.

The media did not report this event, and that used to frustrate me, but I realize that these things must be intelligent and long-lasting because they weren't being reported. But the young people said: "What is it about these things that don't get attention? Are they not important?"

What I suggest is that in this book—and you'll see that at the time the government of Ontario was represented by two or three people, in addition to the national and local levels of government, with a declaration signed by all mayors—is that there was a particular application of the mediation approaches in criminal justice being applied then, and it's now been growing since then.

A second example in terms of the balance is best evidenced in a program that's going on in Ottawa called the Dispute Resolution Centre of Ottawa-Carleton. At that session in 1990 before this committee, I reported that this program was getting off the ground. I am very pleased to report that the government of Ontario, in conjunction with the crown attorney and defence counsel, has been running that program now for two or three years.

There have been over 250 mediations done in the criminal justice system. As legislators, you would best know the value of these things, but it's hard to put a handle on things when you can't put money to it or you can't put a file number to it. But the literature in the field for 15 years has said to legislators that if you incorporate these concepts in legislation and provide these options to members of the public, you create conflict prevention attitudes and skills. The literature suggested that people who go through the mediation programs, including criminal justice, will be better equipped to deal with conflict in the future.

The evidence now in these reports is that eight out of 10 people, as I understand it, who went through the mediation program, with victims and offenders meeting in a mediation room with the support of counsel, would talk to each other again and said they would better handle conflict in the future. In cases that are clogging

our court system, like assaults between two people in a traffic jam, they said they would handle it differently. These are things that I think the committee could look at, because the evidence is now coming in through these practical programs.

Another specific example which I'm very pleased to report on is the work of the Canadian Institute for Conflict Resolution. This year in three cities, Sault Ste Marie, Thunder Bay and Hamilton, the CICR, with the support of a ministry of the government of Ontario, is helping set up three community-based conflict resolution programs that bring in all the community.

I just spoke with Mr Raymond Leclair, with whom I'll be setting up a firm of solicitors this September which will have no litigation department. We'll work with outside litigators. Mr Leclair is a member of the Ontario Civilian Commission on Police Services. He advised me that two weeks ago, at the National Conference of the 18th Symposium on Civilian Oversight Agencies, with representatives from the federal government, RCMP, Ontario, British Columbia, Saskatchewan, Manitoba, New Brunswick, Quebec and others, the theme—he came to me and he said: "Ernie, I can't believe this, but I've been talking about this for years"—the theme of that conference was conflict resolution as a necessary skill for police forces in this country.

In two weeks, the CICR is having a week-long set of courses, as a public service to our nation and to our province, and the seats are all filled. We will have there people from the commission in Ontario, police forces, police people, government agencies and community people, in terms of setting up these community-based conflict resolution programs.

I wonder in terms of dealing with the questions and the depth, the potential of these things, if this legislation that the committee is looking at could, as is similar legislation that's being adopted by the province of Ontario in many other areas, include a reference to alternative dispute resolution as an option. I think this government, with this Hansard report from 1990 and a number of other areas throughout the disciplines, and in particular in criminal justice, has enough studies and evidence before it to decide whether or not and how to include such a reference. I would highly recommend, if possible, that be the case.

I believe from the work that I've been exposed to, both in Ottawa-Carleton, Ontario and different parts of the world, that this is starting to capture the imagination of all peoples on a very grass-roots level and people are looking for the political leadership and legislative initiatives to start making this as part of our normal, everyday way of approaching things. The reduction of the human and economic costs for conflict could then be translated, I believe, into taxpayers' dollars being spent in more productive ways than they are now in terms of dealing with conflict.

Maybe as a closing comment—which would make it almost exactly 15 minutes; I've learned from the last three years how to do these things—I often wonder what urges a lot of us, including myself, to do these things. I spent two years in Akwesasne working in conflict resolution with the Mohawks, who set up a magnificent mediation program which has been reported in four or five international journals. I worked among 800 police officers from different jurisdictions and saw on the ground the value in real-life terms of these processes, and our province played an important role in that.

When you come out of those experiences and you see a healing and you see a dialogue going on and you see conflict prevention and you see people doing collaborative work, I think of a little boy who was delivering groceries, and when he finished delivering the groceries, he asked the person if he could call his boss. When he called his boss, he asked whether there was a job available for delivering groceries. The boss went on to say: "We don't need anybody. We already have somebody. He's doing a great job." He went on and on about that. When he got off the phone, the person said to the boy: "Why did you make that phone call? You have the job." The boy said, "I'm just checking up on myself."

I think that it's inspiring for me to be here to help check up on ourselves, that we take these few moments to do that. Mr Ivan Roy, who was the vice-principal of Woodroffe High School at the time of the mediation program, said he was a sceptic. He retired early to devote his life to this stuff. He goes across our nation and throughout the United States on these programs. He said that he's never seen, after 35 years, the course of students' lives change.

When I spoke with 110 native Indian educators in Quebec City, before I spoke, I saw a sign that said, "I hear a new generation coming." That new generation is calling for justice, which is the topic of this book, Justice...Is Just Us. What really urges me here today, which the native Indians teach—because I have children and grandchildren—is that we need to implement these things for our children and future generations. Thank you.

**The Chair:** Thank you, Mr Tannis. I have Mr Winninger on the list, so we'll begin questions with him.

**Mr David Winninger (London South):** Thank you for coming today, Mr Tannis. I certainly appreciate your support for alternative dispute resolution and, having read the report of the committee that was chaired by Mr Chiarelli, I see a lot of potential as well. I'm pleased that our government continues to support the Ottawa centre for dispute resolution and is also supporting the good work of the Canadian Institute for Conflict Resolution.

I'm reminded of a retired judge of the Supreme Court of Ontario who, by the way, was the judge who heard the LAC Minerals case and, if you'll recall that case, the evidence was voluminous. It had to be taken home every day in two cars, and the trial took, I think, probably close to a year. Well, he retired and he became, I guess, an arbitrator, and he said that had he heard that case as an arbitrator, it would have taken him two days to resolve.

I think there's a lot of hope for resolving issues that arise in a criminal context through ADR. I might add that this government continues to build on the work of those who have studied ADR. One of the most recent projects announced within the Ministry of the Attorney General was the Fram committee, which is looking into resolving disputes in the construction trade through alternative dispute resolution. I think that's a particularly apt context in which to measure its success.

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**The Chair:** I should point out we're also doing that in relation to the discussions with the OMB, where we're looking at alternative dispute mechanisms as well. Mr Tannis?

**Mr Tannis:** I wanted to thank you, Mr Winninger, for those joinder comments. They're very supportive. As my dean of law would have said, all these things hopefully at the end of the day are illuminating glimpses into the obvious.

You sparked me to remember something. Two or three weeks ago I had the privilege of being a keynote speaker at Sault Ste Marie with over 100 people who administer penitentiaries in Ontario, and I didn't know how it came out. I got a letter last week, it was a two-page letter and it was one of the most supportive letters back from people in this province in this system being very, very supportive of this thinking. So you sparked me to remember that experience.

**The Chair:** Any other questions from government members? Mr Curling.

**Mr Alvin Curling (Scarborough North):** I want to thank you for coming too, because you have somehow excited certain parts of my beliefs, in that justice should be done and it's not being really done, and if we can resolve it through the process as laid down.

You know, you said something that really drove it home to me. You said if we just could incorporate what people are saying into legislation—and I'm paraphrasing what you were saying—how effective it was. As soon as you said that, I was about to say, "Well, the enemy then would be lawyers," and I said, "No, I presume the enemy of all of this process would be those who are drawing up legal terms to make sure that people are protected."

In other words, the things that people are saying within our society that are happening to them and need



to be addressed and to be resolved, by the time it gets into the courts and the legal phrases, it's not recognizable; therefore it starts all over again and they say, "That's not what I said."

This morning I was listening to the radio—I think it was CFRB, which is not one of my customary places to listen—and a very interesting native person was speaking—no, I think it was the CBC—and he said something like this: "In order to understand people, first we must know what they are saying, before we can disagree or agree. Then as soon as we understand what people are saying, we can even disagree." I thought it was rather simple that he said that, but it was rather profound too.

With this kind of diversity within our society that comes with different approaches to life or things that have impact on their lives, conflict resolution itself would have to have a lot more listening to understand what they are saying.

Here's my feeling about this, or a question to you: Do you feel that enough listening is being done in order to perceive, to understand what is being said, to proceed with conflict resolution, so we can perceive that? Are we on the right track? I heard a lot of praise around what we're doing, but not really being partisan, I'm just wondering if we are on the right track.

**Mr Tannis:** Thank you for that, Mr Curling. You made me think of a phrase that's being used philosophically worldwide in terms of the transformation of all disciplines, which is the humanization of processes. I think you're quite accurate in how, when processes belong to the professionals, it becomes dehumanizing. My feeling is that the professionals need to be humanized themselves.

I think also that your question is what I would call a bull's-eye question: It's right on target. If we had a VCR and we had two minutes, you would watch a tape that would send tingles down your spine about a young person who did the mediation. A fight was happening and he said: "I couldn't believe it. As soon as we learned how to listen, as soon as I said to the other person, 'This is what you said,' and they said, 'No, that's not what I said,' then everything got resolved." The conflict wasn't resolved; the conflict was dissolved. These young people saw that listening—the philosopher Thoreau said, "It takes two to speak the truth: One to speak and one to listen." What's missing is the listening.

I'm helping some people who are doing mediation sessions with negotiators now, with native Indian claims, and it's just a matter of learning how to listen. I think these communications skills and these processes—and you say it's simple, but it's empowering. You know that expression, "Why make things difficult, when with a little bit of effort we can make them impossible"? It's like, "How do we complicate things?"

I think it's really important and as simple as that. It's listening skills.

If I could be so bold, as a citizen of this province, to go back to a comment I made three years ago when I think Mr Jackson and I were in dialogue in terms of being on the right track, I really believe Ontario is on the right track. I think my observation worldwide is that it is, but one thing I don't think it's doing enough is we've got to move from NIMBY—not in my backyard—to YIMBY—yes, in my backyard.

I think it's got to start with the government. I think it's got to start with government departments. As persons privileged to do public service in this country, we made a list of recommendations three years ago. We all started with looking at our own house. I think it could start there, and there's lots there that can be done and built on.

**Mr Cameron Jackson (Burlington South):** Ernie, it's good to see you, good to see you in front of a committee and good to be in a committee with you in front of it.

**Mr Tannis:** Thank you very much.

**Mr Tim Murphy (St George-St David):** That's covered them all.

**Mr Jackson:** Yes, I think I've got them all covered.

I guess currently I must be the only member who's here today who participated in those rather lengthy public hearings and found them most enlightening. There was a whole section dealing with justice issues. I guess, Ernie, being familiar with your work—and I know we don't always agree. I have concerns about family law mediation as it relates to the rights of children and their victimization, where there's even a hint of violence to the children or to one member of the family, to a spouse.

But putting that aside for the moment, there is a whole series of recommendations on ADR and its relationship to the justice system to reduce the amount of victimization in very much the mode that the minister, when she was before us, talked about—prevention—but also in an area where I'm trying to get this committee a little more focused—restitution.

By virtue of the fact that there is a wide variance among provincial jurisdictions, that some provinces do a better job of, on a mutual agreement, bringing the criminal and the victim together and instead of taxpayers footing all the bill, we somehow allow our system to evolve in a fashion where restitution orders, criminal fine surcharges and these matters, put into a mediated form, opportunities for the victim to meet their assailant by agreement, to deal with the process of healing and expressing their anger and getting that part of the process not being denied to a victim, all of these things are part of the universe that you are currently operating in, in terms of reform and its application to justice.

I wonder if you could share with the committee a couple of examples of where those kinds of very focused reforms in our justice system might surface or where they have surfaced in other jurisdictions. It would be nice if they could surface some time here in Ontario soon.

**Mr Tannis:** I would be happy to do that. It's also a pleasure to be with you and this committee in a room, Mr Jackson.

**Mr Jackson:** You should tell them. We've known each other's families for 20 years, so we may as well get that on the record. We're good friends.

**Mr Tannis:** We're all one human family and obviously the only racism that should be acceptable is the human race.

The concept of restitution is one of the linchpin success stories of alternative dispute resolution. I can give you three examples. Mr Curling's comment also comes back to my mind in terms of answering your question, Mr Jackson, which is that Mr Daubney, when he was chairman of a justice committee for the federal government, did a report on this very topic—it's referred to in the pink book—when he was with Mr Hnatyshyn.

They found that part of restitution isn't always material. They found that in some of the mediation sessions between victim and offender, when the victims heard that the offender was listening to them and heard their pain, that was restitution. It does a lot. We've got to remember, there are a lot of value systems behind human conduct. These things, I think, need to be reintroduced. One of the things of restitution is just that. There are some remarkable stories about that and we can go on about that.

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Another is that there are a number of stories of, say, young people breaking windows or doing something. I've got cases that I'm looking at and I can't believe these cases are in the juvenile courts: theft, a babysitter stealing money and a kid breaking a sign.

As Mr Gordon Henderson, the lawyers' lawyer of Canada, said at this committee three years ago, these are not the things that should be in our system, but we've got some good examples of these young people sitting down and doing something to fix it up, a sense of accountability, a sense of citizenship, a sense of responsibility for your actions, not to learn how to play a game with a system about concepts of guilt or innocence.

That's another example of restitution that you're speaking to. It also speaks to a thought that Lord Waltraud said in 1927 in the House of Lords: that by the end of the century, if we don't get to the concept of obedience of the unenforceable, we're not going to have

a system that works, and I think that these processes allow people to share those experiences.

A third aspect of restitution is what you were speaking to, and there are cases like this with the dispute resolution centre and many, many others, where the parties by agreement come to a financial settlement or something about damage and the courts don't have to be bothered with that. One of the features of the parties coming to the agreement themselves is compliance. They actually fulfil it. They keep their word. One of the big burdens on the courts is not just the judgements but the enforceability of judgements.

I think we have to look at the whole process, the post-judgement process. The enforceability of agreements arrived at by the parties' mutual consent, through restitution and an ADR process, I think, Mr Jackson, is a linchpin of the thinking.

**Mr Jackson:** Thank you very much, Mr Tannis. I'm content with getting those issues on the record. Hopefully, our report will address that, and if you have some additional information, you can make that available to our researcher by way of examples for our report; it would be very helpful to us. I appreciate your presence today and your contribution. Thank you, Ernie. Say hi to your mom and brother for me.

**Mr Tannis:** I will.

**Mr Gordon Mills (Durham East):** I'd just like to have a quick word. I'd like to thank you for coming here today too and I've been listening to you. I looked at this book. I spent nearly seven months of my life in Cyprus with the United Nations, so I can talk to conflict resolution on a firsthand basis, day to day, faced with conflict of many sorts: people getting to work, working things through, damage to property and resolving that. So I have a lot of empathy with what you're saying and I know it works, and I'd just like to put on the record my support for conflict resolution. Having had that experience in another country with different people who have religious—the Turks and the Greeks are entirely different people and it was a challenge, to say the least.

But at the end of the day when you went home, and you were able to stop people from killing themselves, actually, and to resolve it, it gave you a happy feeling.

I was in the police force over there and I can remember that we had this conflict between the Turkish and the Greek police. At the end of my term—I was in charge of a detachment over there—I was able to organize a party, albeit that they came after dark, but they came there to enjoy one another. They wouldn't have probably come to this house where we lived in the daylight, but the fact that they came after dark was a real indication of how conflict resolution can work.

**The Chair:** Thank you, Mr Mills.

Mr Tannis, thank you for the book and thank you for the presentation; it was very useful.



**Mr Tannis:** Thank you. Thank you, Mr Mills. Thank you to the committee.

CRIMINAL INJURIES COMPENSATION BOARD

**The Chair:** Do we have Wendy Calder here? Welcome, Wendy. You've seen the process and how it works. Please begin at any time you'd like.

**Mrs Wendy Calder:** Yes, thank you, Mr Chairman. I understand very well how it works. I'm very pleased that you have asked me to appear before this standing committee on justice to speak about something that I know fairly well, which is the Criminal Injuries Compensation Board.

As you know, there have been many criticisms of the board in the past. We are not immune to those criticisms.

The board is a quasi-judicial, administrative tribunal composed of one full-time chair, which is myself, one part-time vice-chair and 14 part-time members, and an administrative staff of 32 people who administer the Compensation for Victims of Crime Act. This act came into being originally to look after the good Samaritan, the person who went to help the police officer. Over the years, it has broadened into being an act that compensates victims of violent crime under the Criminal Code.

Recently, the board has undergone several policy and administrative changes to improve the needs of victims in the province. We still have a long way to go, but, for example, the board now considers claims which are extensions from applicants for incidents of sexual assault, child abuse and domestic assault which occurred prior to 1968, before the act was in place. These victims no longer face time limitations in filling applications before the board.

The board has also changed its policy in response to victims who need immediate counselling prior to their case being heard. We have found that one of the good news items that the Criminal Injuries Compensation Board provides for is counselling to very damaged victims. Even though our limit is \$25,000 under the act, we still like to pay for counselling. By that, we may be able to do some good for the applicants and not need as large a pain and suffering award. So we are now looking at all people or victims who request counselling, and we consider the granting of interim awards for these counselling services for disempowered victims such as women, children and the elderly.

We had a reorganizational study done of the board by a member of our ministry, which was a little cheaper than getting in a consultant, because our board has always been constrained by direct operating expenses being fairly low and having a lot of problems caused by that. However, this year, we did have a little influx of money, thank goodness.

As a result of the reorganization of the board, a client services unit has been established. This is to provide a

better service to victims. For example, client services staff now respond to all telephone inquiries within 24 hours and all applications received by the board are mailed a written acknowledgement within two business days. These are just two examples of customer service standards in place at the board which we hope are designed to enhance the communication between the victim and the board.

The board is currently reviewing and streamlining all processes and procedures with a view to enhancing operational efficiency and effectiveness. The board is also investing in technology to improve its existing case management system and to provide even better service to claimants and people who are interested in our board, including an improved board scheduling system for hearings.

Something that I understand from being here the other day is very important to a lot of people is that we need to improve the production of key statistical reports. As some people know, when you phone our board to get statistics, we have been very negligent in the past, because all the statistics that we seem to be able to have kept in the past were the type of injury and the percentage of those injuries. So with our new case management system, we hope to have far more statistics to be able to provide to people interested in our board.

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We are also working with the ministry's research branch to develop a series of workload indicators which will enable the board to better estimate its workload and improve its overall case flow management. My sense from board members, administrative staff and, most importantly, applicants is that the average length of time now spent processing an application at the board has decreased.

This does not mean that we do not have a backlog of cases waiting to be heard. That means that all the documentation is there, but we have not been able to hear these cases. That is for a couple of reasons, and I am working on that backlog at the moment. But the reason that backlog came about was that about two years ago we had to stop having hearings in February, because we did not have enough money to pay for per diems for board members and we did not have enough money in transfer payments to pay the victims. That has ceased. We now have enough money, but that created a backlog, along with not having enough board members. I now have five new board members. They will take about six months to train. We are working on that backlog.

One of the reasons that the time to process an application has decreased is partly due to the fact that the board has held more documentary hearings as opposed to oral hearings over the last few years, and also as a result of trying to improve administrative efficiency at the board.

All of these initiatives, along with the appointment of the five new board members, will assist us in expediting cases which are waiting to be heard.

At the board we deal with horrific cases, sad stories of what has happened to victims in our society. You could not sit in some of our oral hearings without coming away feeling that you want to do more for these people, for victims. I know this committee is hearing from a lot of different organizations how to improve the system. One of the areas we have always suggested to our ministry to enhance victim services would be to provide more money, which could only be done through collecting a surtax on provincial fines or something along that line.

I wanted to read you a letter, because at our oral hearings our board members are taught that it is very important to be compassionate and to understand each victim who comes before us. That can be anything, a cut on the face in a bar-room brawl that was not the person's fault who's come before our board; it can be a victim of incest; it can be a victim of sexual assault—which, by the way, we are seeing more and more of. Our case load, from the extensions that are coming in, suggest that 90% of our cases are soon going to be all sexual assault, incest and institutional abuse. We have a special unit of two of the very most experienced board members working on the St John's and St Alfred's institutional abuse, in conjunction with the project manager. We have five people working solely on institutional abuse at the moment, as per the model agreement that was signed by the province, the church and the helpline people.

But this is typical of some of the letters we receive:  
"Dear Mrs Calder:

"I have recently been present at a hearing by one of your board on April 7, 1993. I had a great deal of trepidation prior to receiving the date for my appearance, and I agonized over reliving the entire situation. However, this fine gentleman placed me at ease and I was able to explain my circumstances prior, during and after the assault and answer any questions necessary to complete my case.

"I had felt like a victim throughout my marriage and at the latter part of my years of trauma, so that my self-esteem and self-confidence in my ability to function as a person was lost." This is a story we hear over and over. "I have been going to a group for abused women and retold my excellent experience at the hearing and how my fears had been calmed, and I felt like I was talking to someone who was deeply understanding and compassionate.

"I wish to thank the board member again. Words cannot express my appreciation for the encouragement and understanding. I am working on rebuilding my self-esteem and not feeling like a victim any longer."

We get four or five letters such as that during a week. We also, as Mr Jackson knows, have our limitations as to how much we can do solely because of the act and because, as all organizations, we are only human and we sometimes, unfortunately, do not provide as good a service to some people as they would like.

Our phone lines are jammed. We are taking in about 500 applications a month at the present. With this new inquiries unit, we provide a first-line service of sympathy, telling them where they could get help if we can't provide them with help, and attempting to make this person feel that he or she, as a victim, is being looked after.

I didn't want to take up too much time on what we actually do, but I'm not sure just how much everybody knows about our board. I am certainly willing to answer any questions, and that's my presentation.

**The Chair:** Thank you, Mrs Calder. We'll begin with Mr Murphy.

**Mr Murphy:** What is the average time frame for a response to a request for compensation, between the initial contact and the hearing?

**Mrs Calder:** That, at the moment, would be anywhere from 12 months to 18 months. There are some cases where either the lawyer does not send in the material or the doctor does not send in the material, or we cannot get statements quickly from different organizations, maybe from Revenue Canada. It may be a complicated case where the person has been in hospital for over a year and a half, so they defer hearing it, and that could be two years then. We're working towards a goal of 12 months.

**Mr Murphy:** We've heard in this committee stories of people receiving letters, and were shown a copy of a letter from someone, saying: "We've received your application. Thank you very much. Don't call us for six months."

**Mrs Calder:** We've changed that letter. We were very disturbed about that when we started looking at it.

**Mr Murphy:** When did that happen?

**Mrs Calder:** That happened about three months ago, two months ago.

**Mr Murphy:** Has there been any attempt to re-contact those people, to write back to them, to phone them, to say, "We've changed; we apologize"?

**Mrs Calder:** I would have to check that out; I do not know. We certainly did not like that letter. It was not user-friendly. It was not victim-centred. When we started going through all the letters we sent, we discovered that this was causing a great deal of trouble, and it was not very good so we did change it.

**Mr Murphy:** I don't think it's any surprise to you that one of the almost unanimous things in the deputations we've heard has been criticism of the Criminal



Injuries Compensation Board.

**Mrs Calder:** I realize that.

**Mr Murphy:** One of the things we heard was that a lot of people did not get information about the existence of it, how to do it. What I want to know is, what are you doing now to make that information available to victims, to educate police forces, lawyers, others, about the availability and access to the injuries compensation board?

**Mrs Calder:** That's a good question. We have little cards that are sent out to police forces. We have asked the police forces—we cannot force them to, but we have asked the police forces—to please give these cards to victims. Sometimes in the throes of an emergency, police personnel forget to give those cards out. We have posters in hospitals. Most of the legal clinics throughout Ontario know about us. In fact, Simcoe Legal Services Clinic has put out a very good victims' advocate booklet that tells about our board. Now, we haven't done that; I realize that. Our funds have been limited. We go out and speak to different groups. I was out to a women's group at a hospital not too long ago, so it's on a personal basis.

We have tried to do as much as possible to let people know about our board with the small amount of money we have had. I'm not saying more cannot be done; it certainly can. More people do know about us. It's amazing, just in the last year, how it has picked up. We have no money for advertising.

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**Mr Murphy:** One of the other criticisms we heard was from one witness in particular about the issue of representation of victims by counsel at the board and having a difficult experience at the board, especially with reference to the fact that they felt there was certainly a variability in the quality and sensitivity of some of the board members.

I apologize; I heard some reference to training, but I'm wondering if you could outline for me what efforts have been made to train board members, to bring in new board members or even to specialize the board panels, as I assume that's the way you make a decision, particularly with regard to women victims or particular kinds of cases that come before the board, so that people build up a sensitivity and an understanding.

**Mrs Calder:** I certainly hear what you're saying. The board members, in the first instance, are chosen hopefully for their victim-centred approach. If they don't have that in some respect, we have five board meetings a year where we have different speakers come in and talk to issues that are current, I guess one would say, such as a nurse from the rape crisis unit at the women's hospital. We have a psychologist come in and talk about victims and how to handle them in a hearing. We have a training period of a week for new members

and then we have another update of two days after that week of training.

I'm not trying to put it away from the board members, but in some instances our communication with the applicant may have been bad, to cause that person not to understand the process. As I say, I feel that the board members must be victim-centred and must continuously have training, and we do: We have different sorts of people come and talk to us.

**Mr Murphy:** Do you have sufficient funds for training?

**Mrs Calder:** We could always use more funds for training.

**Mr Murphy:** Have you given thought to specialized panels?

**Mrs Calder:** We have specialized panels working on the institutional abuse right now. In a lot of cases, women victims do not want to tell their story to a male; I have to be honest. So if it says that right on an application, I make sure I schedule two women or one woman. If a male does not want women, then I have specialized male panels too.

**Mr Murphy:** How many applications get decisions in the course of a year?

**Mrs Calder:** I don't know. Our new annual report, which is for three years, is out now. It was tabled, I believe, yesterday afternoon. I'm not sure whether this is here. In 1991-92, we heard only 1,857 applications.

**Mr Murphy:** Does that mean the decisions were rendered, or you heard the applications?

**Mrs Calder:** Decisions were rendered in that part.

**Mr Murphy:** I think I've run out of time.

**Mr Jackson:** I have so many questions, and I know I'm not going to get them all in, but let's start with the last comment. Why in God's name do you have an annual report three years late, when you're spending that kind of money?

**Mrs Calder:** It cost \$30,000 and I did not have it until last year in ODOE, other direct operating expenses.

**Mr Jackson:** Who gave you permission to be three years late? When I requested them from the library, they gave me every report for all the years I wanted, then at 1988 it stopped, and our legislative researcher said, "We don't have a report." I refused to believe that. I just had never heard of it in all my nine years here. Did somebody give you permission or is this just a decision you made on your own not to report, that you were going to save money?

**Mrs Calder:** Save money? I didn't have the money.

**The Chair:** Mr Jackson, we assume that by "her," you're saying the board, as opposed to her as a chair. Is that what you were asking?

**Mr Jackson:** That's generally what the chair's responsible for: the board.

**Mrs Calder:** There was no money.

**Mr Jackson:** Okay. Did you provide an interim report to the minister? Did you not report in letter form, "This is what we spent; this is what we did"? I mean, I know the difference between glossy bilingual production versus your accountability and reporting to a minister to say, "Here are some problem areas."

**Mrs Calder:** We would always report any problem areas that we had.

**Mr Jackson:** Can you get back to this committee with those areas and the manner in which you reported to the ministers?

**Mrs Calder:** Sure, quite easily.

**Mr Jackson:** Let me get the proper name of this for Hansard: The advisory board on victims' issues reported in June 1991; it's really been the only group formally associated with activities of the government or this Legislature around victims' issues. That report contained several recommendations, and there were quite a few concerns and recommendations contained in that report about the processes and conduct of your board in a wide range of issues. Mr Murphy referred to several that we've already heard as a committee. There are issues around time limits, inconsistent treatment of women, strict application of in camera, the categorization of victims.

**Mrs Calder:** A lot of those have been changed.

**Mr Jackson:** Well, it strikes me as odd that if, in your mind, you've got such good news, you're not reporting that these changes are in fact occurring.

**Mrs Calder:** We're trying.

**Mr Jackson:** Okay. On the issue of institutional abuse, are the Grandview survivors eligible for criminal injuries compensation or does it require a separate intervention agreement between the parties and your board, as is the case you cited with St Alban's?

**Mrs Calder:** I don't know. Certainly there are applications before our board and they will be treated as applications. The model agreement was not signed by our board; we are only hearing the cases. So I do not know whether there will be a separate agreement with Grandview.

**Mr Jackson:** Have you removed the barrier to a group such as the advocates' group for Grandview survivors to be able to represent and assist the victim before your board?

**Mrs Calder:** I'm sorry; I'm not sure I understand your question, Mr Jackson.

**Mr Jackson:** There's been concern raised about the standing of advocate groups with the victim before your board for hearings. Are you allowing the Grandview Survivors' Support Group to present the case on behalf

of the victim before your board? You just said that you are doing individual—

**Mrs Calder:** There are separate applications, individuals.

**Mr Jackson:** That's correct. And are you allowing for the Grandview survivors' organization—I'm just using that as a specific example, because the issue of standing and access, recording and in camera have all been raised. You've said you've dealt with most of those; that's what you responded to those. I'm asking, as an example, will a Grandview survivor with an application before your board be allowed to be assisted by her counsel? In this case, the example I used was the Grandview survivors' group.

**Mrs Calder:** Definitely, if she wants to bring an advocate, of whatever education or profession.

**Mr Jackson:** Did you want a supplementary on that?

**Mr Murphy:** Yes, if I could.

**The Chair:** Is this the final question?

**Mr Murphy:** No, I don't want to do that, but let me ask a quick question, in any event. Will that group have separate standing outside of the interest of the victim? I understand the victim can come and have counsel, but will the group representing the Grandview survivors also be allowed to have standing to make presentations separate from the victim and her counsel?

1640

**Mrs Calder:** If you mean the same as the helpline group with St John's-St Alfred's, then I would think they would have standing if they wanted to come before us. Nobody is barred from coming before us. I'm just not sure whether this separate group is there to be an advocate or there to get compensation themselves. I'm just not sure where it follows, Mr Murphy.

**Mr Murphy:** As an advocate.

**Mrs Calder:** As an advocate, yes. We don't refuse advocates.

**Mr Jackson:** Mr Chairman?

**The Chair:** Two quick questions.

**Mr Jackson:** Two very quick ones. I was able to receive from your board in 1985, 1986 and 1987 the access rate for women to criminal injuries compensation and to compare that. I was able to determine that in those years, Ontario women had the lowest access rates nationally for compensation related to violence, sexual assault and domestic violence.

In a subsequent request for that kind of information, we were advised that you no longer keep stats by gender in order for us to determine as a comparative measurement how Ontario women are doing as victims elsewhere. Can you explain briefly why you no longer keep those stats? Then I have one final question.

**Mrs Calder:** I don't know why. I would have



assumed that they were kept. I don't know except somebody must have stopped keeping them, and I have no idea why, Mr Jackson.

**Mr Jackson:** Finally, I'm sure all members get requests from time to time from constituents who are themselves victims, who have made application, some concerns about the letter. Many are concerned, to be fair, about the amount of time it takes to process.

**Mrs Calder:** I realize that.

**Mr Jackson:** I know you appreciate better than most that you're dealing with people who are suffering as a result of being victimized.

**Mrs Calder:** Definitely.

**Mr Jackson:** I have a case, and I want to give you the application if you'll allow me to do that today, for Mr David Dickson. David was an innocent bystander who was shot through the stomach. He has lost his business, he's about to lose his home, and I'm assisting him with social assistance. The case has been celebrated, or not celebrated rather, but it's been recorded extensively in the Hamilton Spectator. His concern is that when he called, he was informed that it's a year away, any kind of response to his file.

**Mrs Calder:** Any response? Not even that we received his file?

**Mr Jackson:** No, I'm giving you his file. He's basically saying, "How long does it take to process given the fact that I am suffering now?" He has an open wound. He cannot work.

**Mr Winninger:** On a point of order, Mr Chair.

**The Chair:** Yes. Mr Jackson, it would be useful perhaps to pass it on and then she can obviously comment to you in writing at another time, but if you have a specific question—

**Mr Jackson:** My question, as I was phrasing the question, was around the notion of applications that are received that address an immediate need, whether this be the trauma that a rape victim is going through, whether it is the pending legal expenses which are burdening absolutely their access to justice, which is separate from you, but you are an opportunity for them to gain the dollars in order to go and fight in court, those kinds of things.

**Mrs Calder:** We don't pay for that sort of thing, court cases.

**Mr Jackson:** No. People use the money they get from pain and suffering to pay legal bills. They pay to put groceries on the table. They pay to make their car payments. They pay to keep a roof over their heads, Mrs Calder. My whole point here is when they get it. They come to us because they need to go on welfare. I'm simply asking you, do you have some process that's sensitive to this general notion of the imminent need for compensation? That's all I'm asking.

**Mrs Calder:** That's what I'm talking about, interim awards. However, an interim award probably, under the act, is not going to help, unfortunately, that gentleman get whole again. He has been terribly wounded.

**Mr Winninger:** I'm really pleased that you changed that form letter regarding six months for people who apply to the Criminal Injuries Compensation Board because I too shared Mr Murphy's concern around that.

I'm also aware that with the ever-increasing number of applications from abuse survivors, the board has had to withstand considerable pressures, and I suspect that many of the applications do indeed come from women who are having ever-increasing access to the board.

**Mrs Calder:** They are, very definitely.

**Mr Winninger:** I was really quite pleased to hear that you had established a client services unit, that you had implemented a system of workload indicators, that you had hired five additional board members and that in fact the waiting time for an application to be heard has decreased. So I think it needs to be stated for the record that a number of positive steps have been taken by the board to address some of the criticisms in the past and that those steps taken have shown some efficacy.

**Mr Jackson:** You must have read the annual report already. That's only a day old. I haven't read it.

**The Chair:** Continue, Mr Winninger.

**Mr Winninger:** Perhaps the chair of the board would like to respond. I know that other members too have questions and comments.

**Mrs Calder:** I'd just like to respond that this board is attempting to do some positive items that have been problems to applicants and victims in the past. We have over 6,000 applications at the moment. We have a backlog. We want to address those problems. We are very concerned that we didn't have a good inquiries unit and communications broke down. I do believe that this board is taking some positive steps towards alleviating some of the frustrations that your committee has heard about.

I do not believe—and I want to leave this thought with you—that the act can totally take care of the needs of a very injured person. It just isn't there; \$25,000 a year is not going to do it. What it is intended to do and hopefully starts, as Mr Jackson says, is a process where you give a pain and suffering award and maybe the person pays some bills off. But we're not welfare and we're not—we can't be everything to all victims, and that is not our fault.

**Ms Margaret H. Harrington (Niagara Falls):** How long have you been on the board?

**Mrs Calder:** Four years.

**Ms Harrington:** And how long would you have been chair?

**Mrs Calder:** Four years.

**Ms Harrington:** Okay. When victims comes before your board, do they normally have a lawyer with them?

**Mrs Calder:** It is not needed. If they ask, we say it is their choice. They do not have to have a lawyer. In many cases, in a simple case, they're probably better off without one because their pain and suffering award is not that great and they would end up paying a fair amount to the lawyer. We do give a contribution to the cost of the lawyer, which is minimal, \$400 or \$500, so it is not absolutely necessary that a lawyer appear.

**Ms Harrington:** I would think most people would, at least in the past, have heard about your board through their lawyer, and therefore their lawyer would in fact earn something by going this route. Do the lawyers also get a percentage of the award?

**Mrs Calder:** That would be between the client and the lawyer. I would hope not. We will only send the award right to the applicant herself or himself. Sometimes the solicitor has asked us to pay it to him, and we will not do that.

1650

**Ms Harrington:** I understand also your frustration about not being able to satisfy these very real and heartfelt situations that are there. The previous presenter was talking about alternative dispute resolution.

**Mrs Calder:** Yes, I heard a bit of his.

**Ms Harrington:** It's obviously very difficult to change from one system to another, but one thing he mentioned was having the victim and the offender be face to face and somehow talk about what has happened. I guess that in some cases could be a healing process. I just wondered if in your view anything like that would be possible in the future.

**Mrs Calder:** It would depend on the applicant. In some cases, the applicant is terrified still of the offender. They do not want anything to do with the offender. What would be the use of bringing the offender and the applicant together if in fact the offender has no money and cannot help out this person? I'm not sure it's a healing process in every case. I don't think it is, from what I know, because in many cases women applicants ask us to have in camera hearings and say, "Please don't bring that offender anywhere near me," because they're frightened.

**Ms Harrington:** Mr Mills?

**The Chair:** I think Ms Akande has a question. Mr Mills doesn't.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Many of the concerns and the limitations that you discussed here or that have been shown after questions are the result of very little money, as you put it. Do you present a budget? Is it the responsibility of the board to contribute to the development of a budget?

**Mrs Calder:** Yes, certainly we present a budget taking into account what we need. That budget in many cases was not met. It was this year.

**Ms Akande:** But in previous times it was not met. There were certain limitations that resulted, for example, the presentation of a formal report. Not to badger, but I too am interested. What was the alternative that you gave for a formal report? Was it an oral report? Was it, as was previously suggested, a letter? By what method did you—

**Mrs Calder:** It was a letter saying: "I am sorry; you have not given me enough money for an annual report. Therefore, I cannot give an annual report."

**Ms Akande:** In that were you asked, or later or at any time, to give certain basics—the numbers of cases that you had handled, results, projections—all of that information which is usually associated with a report?

**Mrs Calder:** Certainly projections; nothing else. Projections of what was needed for the next year, but no statistics.

**Mr Jackson:** She would have filed three budgets, you see, since 1989. She would have filed three times, three budgets, but not reported.

**Ms Akande:** I see. I'm sorry. I don't mean to badger. It just surprises me that they would have permitted the board to continue its function without any kind of official monitoring around how it did its business. That's why I'm asking you those questions.

**Mrs Calder:** I do not believe that exists today. I believe there's monitoring. I believe there's an understanding of the constraints this board has gone through. I believe there's an understanding of victims. As I say, we had some more operating dollars this year.

**The Chair:** Ms Akande, we have run out of time.

**Ms Akande:** I just have one other question, if I may.

**The Chair:** Okay, quickly then.

**Ms Akande:** Given the limitations in budget that you were under, was there still voiced to you in any way an expectation that you would continue to carry on the regular responsibilities of the board?

**Mrs Calder:** Yes.

**Ms Akande:** There was? Thank you.

**Mrs Calder:** Now—well, I won't enlarge on it, but yes.

**The Chair:** Thank you, Mrs Calder, for coming today and providing us with this information. It was useful.

Mr Jackson is going to allow the time he normally would have spoken to speak on the report options.

**Mr Jackson:** Mr Chairman—

**The Chair:** I was going to outline the two options, but do you want to speak to it?



**Mr Jackson:** Well, I didn't know we had two options to outline.

**The Chair:** Okay. We could look at more, if there are more.

**Mr Jackson:** No, all I was wishing to say at this point is that I have indicated from the beginning that I wished to use my time to assist the Chair in completing our task and to ensure that those deputants who very much wanted to present to the committee, but for scheduling reasons needed to utilize their time—I appreciate the committee's flexibility because I think it's in all our best interests to get to a good report.

I wish to inform the committee that Professor Irwin Waller, one of the deputants who is now back from his responsibilities worldwide, will be able to be with the committee next Tuesday. I was hopeful that we might be able to spend some time discussing the report since we're well along in the process.

It's not essential for this committee to hear my views on victims' rights and my background. I simply wanted to use that time to assist victims and other members if they had—because there was the chance that a member would have been approached from someone in their community and this was an opportunity for them to get on through one of the members.

Having said that, I think it might be helpful if we as a committee could discuss briefly how we'd like to approach the report.

**The Chair:** Let me raise the question first because we have approximately four hours and a half, four hours and 40 minutes or so. Let me put the question first with respect to Irwin Waller. Mr Jackson has said who he is. Is the committee favourable to hearing this man on Tuesday? Do you have a quick yes or no?

**Mr Murphy:** Yes.

**The Chair:** The members here? Yes. All right. If that is the case, then my suggestion as the Chair would be that we discuss more or less the mechanics of the options of the report and not write the report until we've heard Mr Irwin Waller, but we do have time now to talk briefly about the way we would like to proceed on the writing of the report.

Can I propose two suggestions? You might have others, but the two are that the full committee write the report in public or in closed session, and the other one is to delegate authority for report writing to the subcommittee with or without the committee having final approval.

**Mr Jackson:** That's four options but—

**The Chair:** Do you go for the first?

**Mr Jackson:** —two options with bells and whistles.

**The Chair:** Let's go through the suggestions, then if there are other options we can discuss them.

The first one: The full committee write the report in

public or in closed session. Can we have some discussion on that?

**Mr Noel Duignan (Halton North):** I was just wondering if you could go to the other option—maybe we can do a combination of both—that the subcommittee look at the report, come back with a draft to the committee and then the committee in full and open session, if we want to, look at the draft and consider the draft, and from the draft to a formal report.

Actually, what I would like is a copy of all the transcripts that have happened over the last eight hours so I have it all in front of me rather than the pile of papers.

**The Chair:** Essentially, you're speaking to option two, which says "authorize the subcommittee to do the report, and bring it back to the committee for discussion."

**Mr Duignan:** Draft report.

**The Chair:** Draft report, of course.

**Mr Duignan:** Right. I'm for that.

**The Chair:** Are there other speakers to this?

**Mr Winninger:** I may have missed this. I assume then we've already completed eight hours, or—

**The Chair:** There are four hours and a half left, more or less—five hours? We have five hours left.

**Mr Winninger:** I understand Mr Waller is quite an expert in this area.

**Mr Jackson:** He's a world expert. He wrote the United Nations first victims' bill of rights proposal.

**Mr Winninger:** Right. So if we were able, with the consent of the committee, to devote an hour to Dr Waller, that would leave us four hours, and I guess my preference would be that we write this report as a committee during whatever it takes of the four hours remaining.

I'm just recalling the fact that when I served on the select committee on the future of Confederation, we were able to write a report as a full committee dealing with fairly complex issues. Surely, if as a full committee we could deal with those kinds of complex issues on Confederation, we can deal with victims' rights issues—

**The Chair:** Mr Winninger, let me ask you a question: Perhaps you're aware of it, but as a point of information, if the subcommittee's writing it, it doesn't take away the time we have remaining. If we do it in full committee, however, then we would be taking much of the time to be doing that.

1700

**Mr Winninger:** I see. I'm sorry. I thought we were just delegating our time to the subcommittee.

**Mr Duignan:** That was my point, because the subcommittee will come back—

**The Chair:** That's right.

**Mr Duignan:** —with some options, some framework that we can discuss and we won't waste time.

**The Chair:** Mr Duignan, please speak into the mike.

**Mr Duignan:** Sorry.

**Mr Winner:** Then, just to complete my train of thought, if we do in fact agree to delegate the initial task to the subcommittee, I would ask that the subcommittee's report come back to the committee for consent.

**The Chair:** That's what Mr Duignan was suggesting, to come back with a draft for the full committee to speak to it, obviously.

**Mr Murphy:** If I can just add, that seems to be a reasonable option and I'd support that, a draft by the subcommittee to report back to the committee.

**Mr Jackson:** I'm quite comfortable with that. I just wanted to remind committee that there are three deputants we have not as yet heard from. I'd have to ask the clerk if there are any others besides Waller and Breaugh on the list of original, approved deputants.

**Clerk of the Committee (Ms Lisa Freedman):** From the list that was submitted to me about a month ago, everybody who wanted to appear has appeared. There were some people who declined the invitation, some people who could not schedule the invitation, but there has been nobody who has been turned away from the set of hearings.

**Mr Jackson:** Okay, other than this wrinkle with Dr Waller, who's been working for some government somewhere and is just returning Monday and could be here as his first priority Tuesday.

**Clerk of the Committee:** Yes.

**Mr Jackson:** Okay. We probably don't need the full amount of time, and that's always helpful to the Chair. The subcommittee would meet to discuss some of the aspects of the report and the recommendations so that we have a fairly complete draft to present to the committee.

**The Chair:** That's right.

**Mr Jackson:** Okay, I think that works fine.

**The Chair:** My other suggestion would be that if there's an agreement, the subcommittee go off to do that. Then if there are suggestions that those of you who are not on the subcommittee want to make to the subcommittee members in the writing of the report, we could do that now, for example. Otherwise, we could allow the subcommittee members to simply go ahead and write a report.

**Mr Jackson:** Put some ideas together. Could I ask another technical question, and that is, whether this committee wishes to complete its work. I'm not a regular member of the committee. I'm here by virtue of my interest in having presented the 125 motion two years ago. Is it your intention to not begin your next

item until you've completed this task? There's two committees right now that are operating with—they've not completed their reports and have proceeded with other work.

I'll put it on the table: That can create some serious difficulties with the committee's agenda, that we can't get to a report-writing stage. That's not been suggested by anyone here but it's occurring in another committee, and I just want a clarification from the Chair. If that's the Chair's wish, then I'm delighted. I won't even mention that I was even looking that it might be a trend, because I'm glad it's not.

**The Chair:** I put it out obviously as a suggestion to the committee members that we hold off writing the report until we hear Mr Waller. Unless there are objections otherwise, that would be—

**Mr Jackson:** But the subcommittee could proceed to start—

**The Chair:** It could if it wants to, yes.

**Mr Jackson:** It's helpful to our research assistant who will be assisting us with the drafting that we can already start getting ideas together and share them.

**Ms Akande:** I do not quite understand that question the same way you responded to it. I understood—please correct me if I'm wrong—that Mr Jackson was wondering whether we were in fact going to, as a committee, start work or hearing or some work on some other topic on some other area before we had completed the writing of this report, and your answer was different from his question. What would you respond to that?

**Clerk of the Committee:** I can give a procedural answer to that. If the government public bill is referred to this committee, that would pre-empt the 12 hours. If there is no public bill referred to this committee, subject to the committee giving me instructions to schedule something else, we would just continue as far as we can with this matter.

**Mr Jackson:** Can I clarify this a little more? I think it's important we understand, and I'll name the committee. The public accounts committee undertook a review of social assistance, brought in the auditor. We have not written that report. We've done our public hearings. We've met with the auditor. We've not written the report.

The committee was doing simultaneous reviews and simultaneous reports. I was simply asking clarification from the Chair because I know there are two other items, private members' bills, that are on your agenda for you, as a committee, to deal with. I was just wondering, for example, if on Monday we're not going to meet to deal with the 125, was it your intention to call the meeting to begin the other two items that are on your agenda to do?

That was my question, and I got a sense from the



Chair that he'd like to complete and then move to the next subject. I was simply saying that was good and I appreciated it, but I didn't want to bring more attention to it because—

**The Chair:** That was my intention.

**Mr Duignan:** Just briefly on the point you made, Mr Jackson made reference to the public accounts committee. The problem with the public accounts committee—you mentioned one. There are five pages, if you've been keeping track of various things the public accounts committee has done and has not completed or is waiting for reports back from yet, so you kind of lose track of what's happening. I certainly wouldn't like, on such an important topic, to lose concentration.

**Mr Murphy:** That's because there's so much wrong to keep track of.

**Mr Jackson:** Now, now, Tim, you're too new to be—

**Mr Duignan:** Most of it actually goes back to the Liberal days, so I wouldn't push that point if I were you.

**The Chair:** Mr Winninger.

**Mr Winninger:** Oh, I pass.

**Mr Duignan:** I was just wondering, on Monday, for example—it's quite obvious that the committee is not going to meet as a whole—if the subcommittee could begin work on that.

**The Chair:** That was the point Mr Jackson raised. The subcommittee can meet at any time this week or early next week to begin talking about the shaping of that report and begin talking about what it would like to see included.

Much of the work can begin and in fact be near its completion before having listened to Mr Waller. I urge the subcommittee members to do that. Is that all right? The subcommittee can meet when it wants to, or do they need to be instructed to do that? We urge the subcommittee to meet on Monday. Perhaps the subcommittee members can agree on a time.

**Mr Duignan:** You can work that out between yourselves.

**The Chair:** There you are. There will not be a meeting on Monday. Are there any other matters to be discussed for the day? Seeing none, I call adjournment.

The committee adjourned at 1708.











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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
- \*Curling, Alvin (Scarborough North/-Nord L)
- \*Duignan, Noel (Halton North/-Nord ND)
- Harnick, Charles (Willowdale PC)
- \*Malkowski, Gary (York East/-Est ND)
- \*Mills, Gordon (Durham East/-Est ND)
- \*Murphy, Tim (St George-St David L)
- Tilson, David (Dufferin-Peel PC)
- \*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Wilson, Gary (Kingston and The Islands/Kingston et Les Îles ND) for Mr Malkowski

### **Also taking part / Autres participants et participantes:**

Jackson, Cameron (Burlington South/-Sud PC)

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



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## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 15 June 1993

Standing committee on  
administration of justice

Victims of crime

Chair: Rosario Marchese  
Clerk: Lisa Freedman

# Journal des débats (Hansard)

Mardi 15 juin 1993

Comité permanent de  
l'administration de la justice

Victimes d'actes criminels

Président : Rosario Marchese  
Greffière : Lisa Freedman





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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 15 June 1993

The committee met at 1539 in committee room 2.

Consideration of the designated matter pursuant to standing order 125, relating to victims of crime.

## VICTIMS OF CRIME

**The Chair (Mr Rosario Marchese):** I call the meeting to order. The subcommittee needs to meet after this, so there's lots of work for us to do.

IRVIN WALLER

**The Chair:** Mr Waller, welcome to this committee. We have approximately one hour. You might decide to take 15 minutes, or longer if you'd like, for the presentation. We have an hour altogether, so in terms of your presentation you might want to speak for 15, 20 minutes or half an hour, if you like.

**Mr Irvin Waller:** I believe you've all received a copy of a series of graphics which I'm going to use to guide me through what I have to say. I wanted just to very briefly introduce myself. I'm a professor of criminology at the University of Ottawa. I'm the vice-president of the World Society of Victimology and was very actively involved in helping the United Nations General Assembly adopt the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and I'm also involved in trying to help those be implemented in a number of countries across the world. I've most recently been appointed to the United Nations Advisory Committee to the Commission on Crime Prevention and Criminal Justice, and this is partly for my work in the area of victims but more specifically for my work in relation to the reduction of victimization. I'm involved with a number of countries and I would like to be involved with this jurisdiction in effective ways of reducing victimization.

I thought I would start with just a couple of introductory comments. One, you see a cartoon that appeared nearly 12 years ago now in the Ottawa Citizen, just before a major conference that took place in this province, the first major conference outside of the United States on victim assistance and victim rights. I think it says a lot about what the issue is in relation to victims.

The last 30 years have seen really significant changes in protecting the rights of accused persons and convicted persons, and that progress, I think, is important and one that this country and this jurisdiction can be proud of.

However, those improvements have left the victim of crime a long way behind. When victims of crime calls for help they do not get the minimal sort of help that they should be getting, and I'm going to be arguing that

this jurisdiction is well below international standards in terms of the ways that it should be responding to victims of crime. That doesn't mean to say that there aren't some wonderful things going on in this province, but they're not happening everywhere and they're not happening in a very consistent way.

The second introductory comment I wanted to make was just to remind you that we are all citizens in a country that allowed the Kitty Reynolds case to take place. Kitty Reynolds was a native woman who was raped and battered in Ikaluit. Some three to four months later, she was arrested by the RCMP. She spent one week in various jails and prisons across Canada, including a prison in this province, and was then driven from the local jail to the courthouse in the same paddy wagon as the person who raped and battered her and who had previously confessed to the police that he had done this.

While the investigation into this by the RCMP Public Complaints Commission clearly states that this is totally intolerable in a democratic society such as our own, it is my view that it could happen just as easily tomorrow to any woman, native or not native, or for that matter any man or child in this province, because there is not the legislation, there are not the programs in place, that would show basic respect for the needs and individual rights of victims.

If you turn to the second page, what I'm going to be arguing is that Ontario should have, urgently, a victim justice act with principles in it, principles very similar to those that are before this committee. However, I would add that it needs a board to ensure that those principles are implemented, and it needs some sort of complaint procedure, possibly similar to that in the Ontario Police Services Act, and it needs funding. I do not think that the issue of providing services and rights to victims is one of whether you have a bill of rights or not; it's a question of whether you put in place the implementation mechanisms to ensure it happens, and I think any major jurisdiction in North America today already has such a bill of rights or set of principles or statement of principles.

For me, it's frustrating that Alberta and Ontario remain the only two jurisdictions that have not chosen to do this, and I think this is very much reflected in the way victims are dealt with in this province.

I'm secondly going to conclude that while Ontario has a model piece of legislation on policing, the Ontario Police Services Act, which under principle 4 talks about respect for victims of crime, that this act in relation to victims of crime has basically not been implemented,



and this is primarily because the guidelines have not been developed and training has not been put in place.

I'm thirdly going to argue briefly that the sorts of principles in the Ontario Police Services Act should be put in place for the whole administration of justice and that basically in the same way that police officers are required to treat victims with respect, so judges, prosecutors, lawyers, people working in the corrections system should be required to do the same thing.

I'm fourthly going to briefly argue, because I realize this is not the time and place, that what this province needs is a high priority to establish the sort of crime prevention mechanisms that exist in every major industrialized jurisdiction except the United States and that ultimately the number one right of victims is not to be victimized and to have sensible policies to prevent that victimization.

On my third slide I'm obviously going to try and improve respect for victims. I'm going to talk about bringing Ontario standards up to the other standards in Canada and to generally recognized international standards, and I'm going to do this without threatening other basic interests like costs or people working in the system.

In 1985 the General Assembly of the United Nations adopted a declaration on justice for victims of crime and abuse of power. What's significant about this declaration is that it says that victims suffer. This may sound very obvious to all of you sitting here today, but if you look at the way criminal codes and criminal procedures have been written, they do not recognize that victims suffer. Victims are basically witnesses in that process, a process where in this province it's the crown attorney, not the plaintiff or complainant's attorney, who represents the so-called interests of the victims; it's the crown who's represented. So this is quite a major statement to say that victims suffer.

It goes on to make four points: one, that victims need to have access to information, a possibility to have input and a possibility to participate in the process. It talks about restitution being a significant measure to be used from the offender to the victim. Where the offender can't pay the restitution, the state has some minimal role. It talks about assistance and support that might come from health and social services, that might come from the police, that might come from other citizens. It also talks about abuse of power, and if there is some interest in talking about jurisdictions beyond Ontario, for instance the establishment of the international court in relation to the Bosnia situation, I would be happy to talk about that in relation to questions because very much the same issues arise in relation to that.

My next slide, I don't propose to dwell on the numbers, but I think it is important to see that a lot of

people are affected in this province by crime, some deaths, some aggravated sexual assaults, more commonly thefts and break-ins, and these figures are obviously approximate figures, just to give you a general idea of the issue.

#### 1550

In terms of impact on the victim, I think the issue of financial loss is obvious to most people. These are not negligible amounts of money. The average break-in in Ontario will result in a \$1,000 loss. I think a \$1,000 loss for most people in this province is a significant amount of money. Roughly half of that money will be insured, so a \$500 net loss is, I think, for most people a significant amount.

Physical injury is fortunately relatively rare, but it's important when it occurs.

Probably the most important part of crime is the emotional trauma, now recognized by doctors. Its technical name is post-traumatic stress disorder. A fairly significant and long-term consequence, it results in people not only having difficulty in their family relationships but missing time off work, being less effective in a competitive society. I could go on.

Let me just mention the exclusion from the process, because that is one of the most important parts. Basically, a typical criminal investigation and trial in this province makes the victim feel totally excluded from the investigation, powerless in relation to prosecution and sentence. First of all, the victim is made powerless by some random offender. Then the state comes in, supposedly to protect them and to provide justice, and to some extent does the same thing, in a cumbersome, slow and painful process that could easily be changed.

If we look at what the UN declaration has basically advocated in terms of community victim assistance, a country such as England is now totally covered. Every community has a victim support scheme. The coordinator of these schemes will be paid out of money coming from the central government. Many of the people will be volunteers. The probation service will be a participant. The police will be a participant. Britain is probably the furthest advanced, but many other jurisdictions have similar programs. I don't know what proportion of Ontario is covered by victim assistance, but if it were 5% of the population of the province I would be very surprised.

Sexual assault crisis centres: Ontario is doing a bit better on sexual assault crisis centres comparatively recently—some good news.

Transition houses for battered wives: Ontario is also doing better recently on transition houses for battered wives.

Police and social agencies, which are probably one of the best responses that you can make to any form of family violence—child abuse, wife battering, elder

abuse—still remain a rarity, although research shows that these are very effective, London, Ontario, of course, being the originator in Canada of those sorts of programs, a cost-effective and a very good way of getting victims referred to the right agencies and dealing with the underlying problems, but no government in Ontario has chosen to ensure that those are spread across the province.

The next slide just talks to the role of the police. In a jurisdiction that probably has, at least according to its citizens, the best police anywhere in the world, I think it's disappointing to see that they have not been encouraged to make a greater commitment to victims.

They are the first agency contacted by victims, although many victims do not contact the police because they're not well treated by the police. Many do. They're the first agency contacted, and their sensitivity to trauma, the information they give, their ability to refer the victim to the appropriate agency, through the 911 system or through a central system, their ability to return property, I think are obvious things to the ordinary citizen.

However, if one looks at what is actually going on, these are still comparatively rare. Fortunately, Peel region has Chief Lunney, whose pioneering work in Edmonton has brought him international prizes. There are other examples of programs for victims, but basically the ideals of the Ontario Police Services Act in relation to victims are not there in terms of the concrete ways, the practical ways that victims are dealt with by the police. This does not mean to say that police abuse victims. It does mean to say that they could be doing a lot more: sensitivity, information, thorough property return, crime prevention, crisis protection, and they can do it easily within their own budgets. Not only can they do it within their own budgets, but it's a win-win situation. In cases where they're wanting more resources, more information, what better than to have the victim on your side?

I think the Edmonton police department in the late 1970s and early 1980s demonstrated that if you treat victims with simple respect and you go through the simple information, referral to agencies, property return schemes, then the police agency benefits and ultimately the community benefits. Ontario, I think, has an enormous amount of ground to make up in that area.

I've included the main principles from the Ontario Police Services Act, and if you look at principle 4, it talks about respect for victims of crime. The full phrase actually refers to sensitivity as well. So you already have legislation that supposedly should help get the respect for victims and understanding of their needs. Unfortunately, the lack of training, the lack of guidelines, the lack, in my view, of political leadership to say that this is a priority is one of the reasons why this is not universal across the province. Again, I am

aware that there are some police departments that are doing these things and are doing them very well.

I've also included for you the guidelines of the International Association of Chiefs of Police. I'd like to draw your attention to the little subclause under the title, "to establish procedures and train personnel to implement the incontrovertible rights of all crime victims." In my view, you need legislation that sets out the principles, but you also need ways to ensure that these principles are followed through in reality, and this is exactly what the chiefs of police said in 1983.

Most Ontario chiefs of police, certainly of the bigger police departments, are members of this association, so they have their own guidelines. This of course was developed at the time of the Presidential Commission on Victims of Crime in the United States, a fairly landmark report that was produced at the same time as a deputy minister from this province led a federal-provincial task force on victims in this country.

I'm going to go through the others relatively quickly, because I assume these things will come back in questions. I've simply listed some of the reparationist use. It's not just court-ordered restitution. This province, for instance, has delayed the implementation of the C-89 sections that relate to restitution, and in my view that's one of the most obvious things in the sentencing process that has to be encouraged.

I've included on the fourth line a reparation to community. One of the obvious ways of funding programs for victims is to have the big-time offenders, involved in economic crime, organized crime, drug crime, ensure that some of their money is paid, which can help fund services for victims and prevention. Most recently, the federal government, in its proceeds-of-crime legislation, tried to have all this money go back to reduce the deficit. Your Attorney General, I understand, or our Attorney General, fought to have that kept open, so I hope some of the proceeds of crime might be used in relation to victims as well.

I would be happy to respond to questions on compensation. I just merely want to say that I tell my students in Ottawa-Hull, "If you're going to get raped, make sure you go to Quebec, because you'll get three times as much money than if you stayed in Ontario." The compensation levels in Ontario are very low. The efforts to inform victims about the availability are very low, and for a province that is clearly substantially better off, even in this present crisis, than Quebec, I think it's very disappointing that more effort has not been made to bring those amounts in line with Quebec.

**1600**

In relation to the process, I am a strong believer that it must involve not only information but it must involve some effort to look after the safety concerns of victims, the reparation concerns of victims. I think this is the main purpose of the victim impact statement. Again,



while it's permissive in the federal Criminal Code, this province does not have a policy on victim impact statements—this policy is not universally applied across the province. It doesn't mean to say that there aren't some people who use victim impact statements; there are, but it's not used universally.

Your victim witness programs exist in a few communities, very lucky communities—I come from one of them—but these are not universally available.

On participation in the process, I would like to at least propose to you that consideration should be being given to a civil party system in this province. You control both the civil and the criminal and the family laws, administration of justice. A country such as France has victims represented in the criminal process by lawyers, legally aided if necessary. This is very important to sexual assault victims, to battered wives. It's also important to families of murder victims and, ultimately, to victims of serious property offenders. This has worked in France for some 20 or 30 years. They have problems of backlogs. It has nothing to do with the victim part, but it's a very good way of saving court time. I believe it is an interest of the Premier of this province to save money. Instead of having a criminal and a civil court and a family court all operating differently, you effectively bring them together, wherever you can, in one place.

I've listed, in the next slide, gaps between needs and services. In the interests of time, as I've made most of these points, I'm going to move forward.

The Manitoba act in 1986 was of course introduced by a New Democrat government. In fact, I would like to add that I've worked with conservative, middle and sociodemocrat governments in all sorts of different parts of the world. I don't see this as particularly a political issue, but it is particularly frustrating now that there is a neo-democrat, sociodemocrat government in this province, and the other provinces with such governments have legislation.

In most countries that have a sociodemocrat government, victims of crime have been a major priority in terms of getting services and getting information. They don't always agree with an active role for the victim in the court process.

I've already made the point that Ontario and Alberta are the only two jurisdictions in this country that don't have any basic victim justice legislation. I could, of course, if you wanted, tell you about the United States. Basically, some 48 states have victim rights legislation. There is a federal act that, as a result of Milliken and other affairs, has a lot of money to encourage states to improve what they're doing. But basically the North American approach has been a bill of rights with some sort of committee to implement it using a fine surcharge.

So I've listed some highlights of what a model act might look like, and I think this is just a summary. You need some principles like the excellent principles that are here. I might change one or two minor details in them, but they are certainly a very impressive set of principles, I think better than exist in other provinces' legislation. I would want to see these tied into the Ontario Police Services Act, because it already talks about this.

I'd like to see a crime victims board, whether you take the present Criminal Injuries Compensation Board and broaden it into a crime victims board or whether you set up a crime prevention board and give it victim stuff. There are a number of different models, but I've listed here membership and functions that you'll see in detail that actually come from the New Zealand legislation.

I would have a complaint procedure like in the Ontario Police Services Act so that a victim who doesn't feel he or she was treated with respect can complain to this board and there can be an investigation and there can be some efforts made to remedy it.

**Funding:** You can go to the fine surtax. This province, I think, is the only province in Canada where you've had judges actually deciding not to order the fine surtax. I find it quite horrifying that you have a group of judges who can say that they're above the law, but still I understand their views that until the province sets up some sensible way of using this money, there is no point in ordering it. I think this is quite serious cause to encourage the efforts to improve the situation of victims.

General revenue may be harder to do in this province these days, and then you've got various forms of drug profits or the proposals that are included in the bill that's in front of us where people write books or that sort of thing.

I've set out some principles in point 4. I've really covered these points and I think what I'd like to do is jump to the last page and just summarize.

I think one of the best ways to meet the needs of victims of crime in this province is to have a victim justice act, that if this act contained a set of principles like those before you or similar, or like those that were agreed by this province when it had a Liberal government, the federal-provincial-territorial statement of principles in March 1988, or like the set of principles that were proposed by the Conservative government when it was in place, any of those principles, and they all really amount to the same thing, those should be put in legislation with a board—there are a number of ways of arriving at that board, a crime victims board—a complaint procedure and funding, this would go a long way to bring this province closer to Canadian standards, the standards set by other provinces and to the standards set internationally.



I was looking for some examples of what had happened as a result of other legislation in other provinces. I thought I would just show you the difference between your province, with its limited number of experimental projects that could probably be put on one of my graphics, and British Columbia. This is British Columbia. British Columbia, by the way, has its own 800 number. My advice to any victim in this province who wants help is to call an 800 number that goes into the US that's linked to the National Organization of Victim Assistance. They will get support, they will get direction on how to claim criminal injuries compensation, they will get some direction on how to get in touch with such as crisis centres, domestic violence programs and all those things. This province does not have that and I think it's long overdue.

The three other things, with the Ontario Police Services Act, it's obvious that there has to be guidelines and training. I would like to see those same guidelines and training relating to judges. It's kind of obvious, I think, to have consistency between the progress that has been made in the policing area and what goes on in the courts, and obviously I agree with the present Attorney General that the number one priority for victims is to reduce victimization.

Several other provinces—Quebec is the most notable—have been working very hard on a crime prevention act. The minister of public safety and security of Quebec will be announcing some time in the next two weeks the release of their report, and I think that will be a model that this province will want to look at. The Horner report at the federal level has already made recommendations. So I hope this province will be able to move fast to make a difference to crime levels through prevention.

**The Chair:** Thank you, Professor Waller. We have about half an hour and we'll start with the government members. Mr Frankford.

**Mr Robert Frankford (Scarborough East):** I'm not regularly a member of this committee, but I'm a member of the standing committee on government agencies and in it we have been looking at police services boards and we have discussed the Criminal Injuries Compensation Board a little.

With police boards, the question of crime statistics has come up. It often starts with race and crime, but then I think it gets more sophisticated with the realization that other demographic data are as valuable or probably more valuable. The other day we interviewed a recent appointee to the Metro police board. I asked him what he thought about crime statistics and he said that he thought we should be collecting victim crime statistics, which I had never thought about before, but I think on reflection makes a lot of sense. Could you give your views and also just give some indication of what is available currently?

1610

**Mr Waller:** Yes, I think it would be a good idea for this province to undertake, on a regular basis, a crime victimization survey. This survey would not only give supplementary statistics to police statistics on the amount of crime; it would show some of the reasons for which victims are not reporting crime to the police. It would also show something about victims' experiences with the police and would give very useful data for crime prevention.

Canada, and therefore Ontario, is again one of the few major industrialized countries not to undertake victimization surveys on a regular basis. For instance, the United States, Australia, the Netherlands and Britain do these on a regular basis. A committee like yours, for Britain, for instance, would be able to have a little coloured, very readable graphics document that would show you the crime picture, the reasons why people aren't reporting, their views of the police and some of the characteristics of why particular people are victimized. I would be happy to make a copy available to this committee for you to see.

I definitely think this province should either undertake its own survey or ensure that Statistics Canada undertake such a survey. I would want to see the regular survey supplemented by a survey in relation to victimization of women. Statistics Canada is doing a national survey in relation to criminal victimization of women and I would like to see that done on a more regular basis.

I would also like to see these done in major cities like Metro Toronto or the Ottawa-Carleton region. These are well established, well known, well used. I've just come back from a meeting of the Commonwealth of Independent States. These are now being used in those states. I'm sorry to be so critical of Ontario, but Ontario is really a long way behind the rest of the world in responding to the problems of crime in a reasoned and effective way, and that includes victims. I feel very strongly about the urgency to get a government which will act and do something about this.

This particular sort of survey is an important prelude to avoiding having places like Toronto or Ottawa-Carleton become the next Chicago or Philadelphia. I think it has to be thought of in those terms. These are tools used by other national governments and other city governments as one of the main ways of trying to prevent violence and ensure that the victims of violence are dealt with in an effective way.

**The Chair:** Mr Frankford, we're going to move on. There are two other speakers.

**Mr David Winniger (London South):** I'd like to thank you, Professor Waller, for making a number of very constructive suggestions today.

As the parliamentary assistant to the Attorney Gen-

eral, I have a considerable interest in improving the system as well, of compensation and services to victims of crime. I don't mean to defend the status quo. Certainly, officials from the Ministry of the Attorney General and the Attorney General herself have suggested that there's a lot of work to be done, particularly in the areas of education and community development, and that a bill of rights per se would be meaningless unless we provide the programs and the services and the resources required to give real meaning to such a bill.

I would also ask you to comment perhaps with regard to your statistics on compensation for victims of crime with regard to Ontario, because I understand that in fact Ontario is the fourth highest of the 10 provinces in terms of average award per victim, and that it is second only to British Columbia and Quebec with respect to the maximum payable.

The third comment I would make is that notwithstanding that Quebec has the highest average award for compensation to victims, it also has, as I understand it, the narrowest qualifying criteria for these awards. I wonder whether it's not possible to have a much higher average award if you only award that compensation infrequently.

**Mr Waller:** First of all, Ontario has done a lot in the last certainly three or four years to improve the amount of compensation paid, so it is making progress. The reason it's the fourth is that the top three all tie the compensation amounts to the worker compensation amounts. Whatever is paid for the loss of a finger in a working accident is what would be paid for a loss of a finger in relation to crime. So the principles for British Columbia, Quebec and Manitoba, which I assume is the third power, are different from Ontario's.

My analysis of the statistics, which are no longer made public so I don't have the most recent figures comparatively, is that the numbers of people to whom awards are made in Quebec and Ontario are roughly the same. The tight qualifying amounts I don't think make that much difference.

There are differences, of course, in the procedures, and I'm not necessarily arguing that it's better to use the Quebec procedure that doesn't allow a hearing, for instance. The Ontario one does. I would, however, add that I would expect Quebec to make a number of significant improvements. I'm not sure if they've introduced the bill yet, but there are plans to introduce a bill to make improvements.

**Mr Winninger:** There are in fact areas of compensation covered in Ontario that are not awarded in Quebec.

**Mr Waller:** Okay, and I think vice versa. I think what's important about Quebec, other than the amounts, is that it's also done a fair bit of research, and I mean independent research. In Quebec there's a group called Plaidoyers-victimes, which means roughly "victim

defenders," which is a round table of all the major groups that work with victims: prosecutors, police, sex assault crisis centres, domestic violence groups, criminologists; all of those. It's a very exciting group. They were asked to do a review of the compensation program, which they did, a sort of careful research review looking at a bunch of cases, talking to victims. They made a series of recommendations and I understand that there are going to be some changes made.

I think Ontario should be doing similar sorts of research. I think Ontario should be encouraging similar sorts of groups. I don't mean to say that there's nothing good with the compensation program in Ontario. It was one of the earlier programs. There are many things that are good about it. But I think one has to set up a process whereby there's regular review and reform going on.

As a citizen of Ontario, I'm not happy with the fourth highest, particularly when we look at how far behind we are to other provinces like British Columbia or Quebec. The fact that we're better than Prince Edward Island doesn't make me feel that good.

**Mr Winninger:** I have a colleague who's going to ask a question. Maybe afterwards we can compare charts, because I have a chart that shows what Ontario has, and outlines in other provincial bills of rights, and it's very substantial indeed.

**Mr Cameron Jackson (Burlington South):** Do you want to share that with the rest of the committee?

**The Chair:** Approach me.

**Mr Jackson:** It was a request through the Chair. I apologize.

**The Chair:** Sure.

**Mr Jackson:** Will he share that with the rest of the committee?

**Mr Winninger:** I think I probably can, yes.

**Mr Jackson:** It would be helpful.

**The Chair:** Okay, we'll do that. Ms Harrington.

1620

**Ms Margaret H. Harrington (Niagara Falls):** I will be brief. In a conversation with one of my constituents just over a week ago, this woman made the comment that there's no justice for women. You also spoke about reducing victimization as one of our primary aims. Certainly, we agree.

What I want to ask you as an expert witness is that to me, reducing victimization entails changing some very basic attitudes in society and also probably gets into the area of increasing the economic power of women and the whole question of equity in society.

The second question I wanted to hear your comment on is, why is Ontario behind? Is it because for decades we've been thinking of ourselves as Ontario the good? Why are we behind?



**Mr Waller:** I'll answer the second question first. I think one of the reasons is that you have an Attorney General's department which brings together a traditional prosecuting philosophy and that's been very dominant right the way up to the deputy minister. That's why it's been so difficult to bring about change.

That is not true at the present time, so I'm hoping that we could see some changes. You see this in other countries. When you get people in a traditional—who've been through law schools where victims were never talked about, where the only thing that counted was the rights of accused persons and convicted persons, which is after all what's reflected in the Charter of Rights and Freedoms, almost exclusively. That's what they go for. Victims get in the way of that philosophy. They don't read the right to life, liberty and security of the person, or sections 15 or 24 as things that you have to worry about in a court of law.

As to your first question on the issues of how you go about prevention, I would certainly agree that both the points you made are important parts of that. I am a great advocate of what the Swedish are doing, who have made efforts along the sort of lines you talked about in terms of general policy. They have a permanent crime prevention council whose job it is to bring the research together, to evaluate programs, to make proposals to the different government ministries about what should be done.

I think in answer to both of your questions that what is needed in this province is some agency that will bring together the research, that will bring together the people who can make this happen, be they mayors of cities, be they women's groups, be they native groups, or be they police groups so that they have some focus.

The Ontario Police Services Act was a step in that direction, but it has to be implemented and the municipal police services board has to be given the power so that it can make sure that safety and security of persons and property is indeed a priority, and in relation to these issues, that the victim issue is a priority.

I could give a much longer answer to your question on prevention. I would be happy to share with you a lot of what's going on in other jurisdictions, including Quebec, on the sorts of issues you raised.

**The Chair:** Perhaps some of the members might want to ask that question again.

**Mr Tim Murphy (St George-St David):** One of the things you said in answer to one of the previous questions was that there were some statistics that were no longer made public. I'm wondering which ones you were referring to and who was no longer making them public?

**Mr Waller:** Okay. Statistics Canada used to produce a report on criminal injuries compensation in Canada. I think the last report was published in 1986. This was a

very extensive report showing the policies in all the different jurisdictions and comparing the amounts paid and the numbers. You could use the crime data to have a look at whether there was more crime in the provinces, whether there were more people paid compensation and all that sort of thing.

I assume that the federal government, when it started withdrawing from its supplementary funding to criminal injuries compensation, decided it could no longer afford that report. You can get annual reports produced by the different provinces. The Ontario one is produced and you can get the Quebec one. However, it's quite difficult to make really useful comparisons because it's not just what's in the legislation; it's the way it's used.

**Mr Murphy:** In fact, the Criminal Injuries Compensation Board in Ontario didn't publish an annual report for three years and finally put one out within the last week or 10 days.

**Mr Jackson:** In the course of these hearings.

**Mr Murphy:** In the course of these hearings, so I understand your frustration. About 10 years ago I wrote a paper on criminal justice statistics and the absence of them in informing policy decisions.

I wanted to ask you a question about the victim justice act. During the course of these hearings, one of the things we've heard quite clearly, I think, is that a bill of rights is laudatory, but unless there's some kind of enforcement mechanism, some kind of real application of those principles, it may be worse than nothing because it raises expectations without delivering substantive services.

So I wanted to talk to you, because you've got a complaint procedure and a board and some kind of mechanism for enforcement, and I'm wondering how you viewed that complaint procedure working and against whom it would be made and how any decision of the board in response to a complaint would be carried out in police, judges, crown attorneys, for example.

**Mr Waller:** Okay, my model of a victim justice act would be a combination of the original Manitoba act and the New Zealand legislation. I would have a board, and I think on about the third last page, I've got a thing called a crime victims commission, with membership from police, judges, social services, women, native groups etc, and a series of functions. I would, within the legislation, include a complaint procedure somewhat similar to the Ontario Police Services Act.

In addition to putting it in the legislation, I would make sure that the people who are going to hear the complaints have some basic training and sensitization so that when a victim calls up and says, "I was a victim of sexual assault and I asked for a female police officer and the person said: 'Well, we don't believe in that. I'm here. I'm just as good. I've been through this training,'" when she makes that complaint the people receiving it



would have some idea of what's going to go on.

I'm not sure. The complaint procedure, in relation to police, might stay where it is, but then you've got to make sure that the people in that complaint system know about it. They don't. They have no idea that the Ontario Police Services Act has changed the previous act. So they have to know about it, and I would limit the complaint procedure here to those cases not covered under policing. In relation to courts, in relation to other agencies that are funded by the Ontario government, that would provide help.

**Mr Murphy:** One of the other things you made reference to is that Ontario and Alberta are the only two provinces that haven't put the 1988 statement into some kind of legal framework. I've looked through here and I don't see a summary—it's perhaps because I'm just missing it—of what that statement was. Is it in here? Am I missing it?

**Mr Waller:** I have copies with me. There are 10 of them, so I don't propose to read it to you. But they cover the same sort of ground as the bill that this committee's looking at. In my view, they don't do it quite as well. They're a bit vague and I think there is a need to make them more specific. They're very similar to the Quebec statement. Manitoba's were more specific than this.

This is all that I assume the federal government could get agreement from all the provinces on at one time. I think you can do better than this by taking the same principles and just making them a bit more specific.

**Mr Murphy:** If you could make one copy available, through you, Chair, that would be much appreciated.

You also made reference to—I believe you called it a civil party system, which is sort of one system that applies to family, civil and criminal. One of the debates, I guess, we've had in this committee is the role of counsel for victims and the role particularly that they would play in a criminal justice setting and if you were to assume the current adversarial system of criminal justice. How far would a counsel to a victim go? Would you see them cross-examining the accused? Where does the role stop, if it does?

**Mr Waller:** I'd like to make a distinction between what I think you could do tomorrow and what you could do five years from now. I think you could put in place a victim justice act with a series of principles, with a board, making sure that there's research, all those sorts of things, immediately. I think all the experience is there, all the knowledge is there.

1630

In relation to what I said about the civil party system, I think there's a need for some limited experimentation, just as there was limited experimentation relating to unified family courts. I think one would want to find a particular court that is interested in this. There are quite

a number of judges, by the way, who are interested in this in this province. I can see one of those judges or a series of judges who would be prepared to experiment with it. I call it the civil party system just because I'm basing it on what the French do. There are various different forms of this in other jurisdictions across the world.

Basically what it would do—probably an initial experiment—is start with the more serious cases, which would include murder, various sorts of sexual assault, family violence, robberies, some sorts of break-ins where there's likely to be a severe post-traumatic stress disorder, and would make some sort of duty counsel, victim counsel, available to them who would inform them of the process and who would ensure that their points of view were input into the process, so that it would go beyond the notion of a victim impact statement. Their job would be to ensure that the victims' interests, for victims' safety, for reparation, for privacy and for recognition of the harm done to them, were all respected in the courtroom. I would specify this in terms of the initial procedures.

Obviously, it has to be done consistent with the Charter of Rights and Freedoms. I'm sure there would be some lawyers who would test it, but I think there is a way of doing it within the right to life, liberty and security of the person in section 15 so that you could actually make it happen. It would have to be experimented with by the province rather than the federal government, because the province has the jurisdiction over all these issues.

I don't know whether I would put the family stuff in there immediately. I would go for the civil and criminal immediately and maybe look at the possibilities in relation to family issues. It's getting more complicated because of the high-profile concerns about wife-battering at the moment.

**Mr Murphy:** Having succeeded in the seat from the former Attorney General, who instituted some elements of court reform, I just think of the hornets' nest some of that might cause. In any event, I would like to talk about it a lot more but I know I'm out of time. We only have a couple of minutes.

**The Chair:** Good. We're getting that photocopied before you leave.

**Mr Jackson:** Professor Waller, at the outset let me say that from the very first time I read of your work, both domestically and abroad, I found it to be perhaps the most concise and clear presentation of a combination of issues which have troubled jurisdictions all over the world and certainly troubled us here in Ontario.

Also, on a personal note, I have been trying to get you before some committee of this Legislature for the last four years, so today is a special day for me. I know I share the sentiments of all the committee that we're

very, very pleased that you are here. Your testimony very clearly distinguishes you among all the deputants for the kind of information you bring and the expertise you bring. So, on a personal note, I want to thank you.

The second point I wanted to clear up is, although you've made three references in your presentation to what a fine bill Bill 19 is that I've tabled, I want to assure you that I would not have passed as one of your students because of the extensive plagiarism that I did on the many bills that you've impacted globally.

If the truth be known, this is simply a compilation of much of your life's work, and also with consultation from the Barbra Schlifer Commemorative Clinic, the Ontario Association of Interval and Transition Houses, their legal counsel, the Ontario Coalition of Rape Crisis Centres and Metrac, which is the Metro Action Committee on Public Violence Against Women and Children. These individuals have participated in the development of this bill. It's really not quite my bill, since I'm not a lawyer, just someone who's deeply concerned about these issues.

Having said that, I'd like to start with the point that Mr Murphy was on, and the bill does—you've been sent the most recent copy—address a few of the issues on the point about a civil party system. There are currently some impediments. There are opportunities for judges to allow victims to participate more directly, to seek out restitution without actually doing a parallel civil suit.

I'm just going to identify one. For example, there are impediments by the imposition of security. A judge may also not disallow interest. He or she, the judge, has considerable power in terms of allowing victims to participate in the process. The bill that I've proposed offers some modest reforms into our system, not a full-blown civil party system, which clearly allows the three parties to be present at the one time.

Could you comment on some of those, instead of envisaging a larger reform system that involves all the participants, including the victim, a few key kinds of reforms that could occur under the current power of the Attorney General in order to allow victims to have a greater impact in a court situation and to have their case heard, to not frustrate them in their process of getting compensation and so on. Are there any examples that you might cite, any specific recommendations?

**Mr Waller:** I've already mentioned that the restitution sections that were proposed under C-89—I'm not sure if—

**Mr Jackson:** Can you expand on that because I think the committee has not received input on that, so that if you could take a moment and expand on that, that would be helpful for us.

**Mr Waller:** In 1989 the Parliament of Canada adopted a series of amendments to the Criminal Code that are usually referred to as C-89. These were the

federal government's efforts to implement the federal-provincial task force on victims of crime, their recommendations, and they were done after consultation with the provinces and I assume therefore agreement as to what should be done. A major section, probably more than half the length of those amendments, was concerned with the establishment of restitution as a separate sentencing alternative.

Although it was adopted by the Parliament of Canada, it has never been brought into effect and I've never seen a clear statement about that, but I'm sure that if the government of Ontario had wanted it to be brought into effect that it could have been.

**Mr Jackson:** Can I interrupt you there? Are you saying that some provinces have and some haven't or are you saying that no province has?

**Mr Waller:** I don't know the details of negotiations between the federal government and the provinces, but I'm sure that if Ontario had wanted these sections in, they would have been brought in in some form. I'm not sure if there's still a bill in front of the federal Parliament, but there have been efforts to revise those sections.

But my position is that it would be important to amend the Criminal Code to make it mandatory for a judge to consider making a restitution order when a person's convicted, and you would do this after assessing both the damages to the victim and the ability of the offender to pay and you would effectively do it in the same way as you would in a civil procedure. The provinces can do that and this province has been the major block to that happening because it has gone to the Supreme Court and said that the federal government can't legislate.

There's a problem with the federal and provincial governments getting together around this. Restitution would be one. In order to assess restitution you have to give the victim some opportunity to talk and some possibility to cross-examine the victim in the court. In complicated cases, you can still go to the civil court, but most of these cases are not complicated.

**Mr Jackson:** And this would prevent much pressure on the civil system, which was your point earlier.

**Mr Waller:** Yes.

**Mr Jackson:** Thus, by allowing it to occur at that end, some victims might feel that having had restitution and having had their opportunity to state their case without being themselves put on trial was sufficient and would not require overburdening, or the potential for overburdening, our civil court system.

1640

**Mr Waller:** Correct, but it's also a simple way of recognizing the victim's needs. It also provides an alternative to prison. France, for instance, which uses restitution a lot, both informally and formally, is not as



heavy a user of prisons—

**Mr Jackson:** They have a civil code system and we don't.

**Mr Waller:** Well, this is what the lawyers argue about. I would not accept that the differences, in relation to this issue, are that fundamental.

There are also in C-89, amendments to the Criminal Code, the victim impact statement provisions which basically require the Attorney General of each province to set up a set of procedures. I'm not aware of this province having set up those procedures. It requires defining a form, saying who's going to prepare this form, whether it's the police or the prosecutor or victim support, and making it universal across the province.

Also, one of the reasons I like the principles of the Ontario Police Services Act is that if those were included in this bill or in a separate bill, then there would be some obligation on judges to respect victims of crime and understand their needs, that judges have a common law jurisdiction to allow a victim to talk in the court. However, common law jurisdiction means that if the judge says no, there's no appeal, and there are appeal court cases on this. That could be changed by the province saying, "We want to see this." A general phrase like this would allow a lot of room to manoeuvre for judges to interpret and weigh.

The victim witness programs: Ontario's had, however many there are, 10 or 12 victim witness programs spread across the province, for a very small fraction of the present expenditures on criminal justice in this province. These could be spread all the way across the province.

I would go back to the policing thing. Basically, it doesn't cost anything to use some of the police training time in the development of procedures for policing to ensure that police officers inform victims of what's going to happen and in simple terms inform them what's going to happen when the case comes to court. You can send this with the subpoena or you can do it in a human way through the police officer.

There are lots of procedures used in other parts of Canada. This province is not doing these things. All of those would lead to victims having a better understanding, a better expectation, having some better input and having some feeling that they participated at least to a limited extent in the process.

**Mr Jackson:** Victims also have contacted me and made appeal with respect to the Ontario Board of Parole. I wasn't aware until recently that only a handful of provinces have parallel parole boards to the federal parole board. This was a mystery to me: why we have one when most provinces don't. They're for two-year-less-a-day crimes, but there's an awful lot of sexual assault and violent crime involved.

My colleague in the governing party referenced a

recent committee review of that. We were quite shocked to learn that there were limited, if any, victim services, but the parolees had an increased number of rights afforded them to have testimonies, videotape, the right to a lawyer, whereas victim impact statements in a case for parole could be disallowed by the board, and a whole series of things.

Can I ask you to respond to that briefly? We have not had much deputation at all on the parole board and its impact on victims. This is an area I was hoping that perhaps the committee could offer some recommendations on. I personally—and I'll get my bias off the table—don't see a need for it. If we can get rid of the Ontario parole board, we'd have a couple of million dollars to put into victim services.

There's also the provision of notice when someone is appealing for early release, notifying. I have a woman in my community whose rapist boyfriend was released and immediately left prison and came with a gun and confronted her at her employment. Had we notified the police or the victim, we might have avoided the hostage-taking and the drama that was life-threatening.

There's a series of recommendations you've seen, and we haven't responded to them in particular, within the Ontario Board of Parole. If you can take a moment to go over a couple of those recommendations, it would be helpful.

**Mr Waller:** There are four provinces that have parole boards, British Columbia, Alberta, Ontario and Quebec, so the major provinces have parole boards. There's a federal law called C-36 that is probably the best piece of victim legislation in Canada, that does go most of the way to implement the UN declaration in relation to federal corrections and the federal parole board. It doesn't go the whole way, but it goes very closely to the whole way. So there is a piece of legislation that could be very easily applied at the provincial level.

I would just draw your attention to the guidelines being used by the British Columbia Board of Parole, where it has for some time tried to make restitution a condition or partial condition of parole. Basically, they're encouraging people to make sure that they have made restitution to the victim before they will consider their release. I think there are good models. My understanding is that the Ontario parole board has been quite interested in what I call victim-sensitive procedures used by other jurisdictions like North Carolina, South Carolina, British Columbia and the federal system. I think it can become a useful way of responding to victim needs.

In terms of the funding, I'm not sure we always have to choose to abolish parole boards as a way of funding victims. For me, the most obvious way to ensure that we have a rational criminal policy in Ontario or in Canada is to develop a rational criminal policy, and that



would be like what we've done in the health area. Paying for prisons or paying for police—these are scarce resources, so you set limits, just as you set limits on hospitals. You say: "Yes, we should be spending money on victims. Yes, we should be spending much more money in a much more concerted way on prevention. We're going to have to divide up the pie differently, so that means this level of prison use." Then you say to judges, like you say to doctors, "You work out which people have to be in there for the long periods of time and which people for shorter periods of time." That will give us a much safer and secure Ontario, to quote the Ontario Police Services Act. You do the same in relation to policing. A committee like this should be pushing that sort of approach, particularly given this Ontario government's concern about the deficit. This is such an obvious thing to do.

Criminal justice spending has just been going straight up without any obvious payoff in terms of limiting crime, without dealing with victims, without giving us the medium- and long-term prevention we need.

**The Chair:** Mr Jackson, we have gone beyond the time, but I realize there are more questions that need to be asked.

Mr Winninger, was your question a very brief one?

**Mr Winninger:** It wasn't even a question. It was just a very short point in regard to Ontario introducing provisions which other provinces haven't. One example was restitution. You dealt with that earlier in your submission. I was just going to remind the committee that following the proclamation of section 15 of the Charter of Rights many challenges were based on the fact that certain remedies or sanctions were offered in one province but were not provided for in other provinces, so it helps to have a uniform approach to avoid charter challenges under section 15.

**The Chair:** Do you have a comment on that, Mr Waller, a comment on the comment?

**Mr Waller:** I don't think so.

**The Chair:** Okay. Professor Waller, thank you very much for your presentation. I think all of us have found it very instructive.

Unless there is anything that needs to be raised by any other member, we will adjourn and have the subcommittee convene for its continued work. Meeting adjourned.

The committee adjourned at 1651.







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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
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- \*Murphy, Tim (St George-St David L)
  - Tilson, David (Dufferin-Peel PC)
- \*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

**Substitutions present/ Membres remplaçants présents:**

Haeck, Christel (St Catharines-Brock ND) for Ms Akande  
Frankford, Robert (Scarborough East/-Est ND) for Mr Malkowski

**Also taking part / Autres participants et participantes:**

Jackson, Cameron (Burlington South/-Sud PC)

**Clerk / Greffière:** Freedman, Lisa

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service

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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 28 June 1993

# Journal des débats (Hansard)

Lundi 28 juin 1993

Standing committee on  
administration of justice

Subcommittee report

Comité permanent de  
l'administration de la justice

Rapport de sous-comité

Chair: Rosario Marchese  
Clerk: Lisa Freedman

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Monday 28 June 1993**

The committee met at 1538 in room 228.

SUBCOMMITTEE REPORT

**The Vice-Chair (Ms Margaret Harrington):** I call this meeting of the standing committee on administration of justice to order.

The first item is a report from the subcommittee. I would like to read that recommendation into the record.

"For the purpose of committee hearings over the summer recess, the Chair, in consultation with the subcommittee, (and in the case of private member bills, in consultation with the sponsor of the bill) shall have the authority to make all arrangements necessary for the orderly consideration of all matters referred to the committee."

Questions or comments?

**Mr Mike Cooper (Kitchener-Wilmot):** I'll move that recommendation.

**The Vice-Chair:** Any discussion?

**Mr Tim Murphy (St George-St David):** Just one question. I gather this means that the arrangements are made within the context of the time frame set for the sitting of this committee. In other words, the subcommittee isn't allocated authority to decide how long we sit, just in what order we sit within that time frame.

**The Vice-Chair:** Yes.

**Mr Murphy:** I have no further discussion.

**The Vice-Chair:** All those in favour, please raise your hand. Any opposed? Carried.

**Mr Noel Duignan (Halton North):** I'll move adjournment.

**The Vice-Chair:** I shall adjourn this committee. The subcommittee is to stay.

The committee adjourned at 1540.

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**Chair / Président:** Marchese, Rosario (Fort York ND)

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Cooper, Mike (Kitchener-Wilmot ND) for Mr Marchese

Haeck, Christel (St Catharines-Brock ND) for Mr Mills

Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND) for Mr Malkowski

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**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



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Third Intersession, 35th Parliament

**Assemblée législative  
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Troisième intersession, 35<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Monday 16 August 1993**

**Journal  
des débats  
(Hansard)**

**Lundi 16 août 1993**

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

**Employment Equity Act, 1993**

**Loi de 1993 sur l'équité  
en matière d'emploi**

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 16 August 1993

The committee met at 1402 in room 151.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** We're going to begin with the committee hearings. I would like to welcome all of the committee members and all of the other people who are here probably as deputants in the days to come. We are here to talk about Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women.

I would like to point out several things for the benefit of committee members. Research has done several papers, as part of what we talked about in the subcommittee, that may be useful for many of the members to read. I would urge you to read them earlier rather than later. They are An Overview of Bill 79, the Employment Equity Act, 1993 and Employment Equity: An Overview of Policies and Programs in Ontario, the legal framework for employment equity, these two documents here.

We also agreed in subcommittee that deputants would give us their briefs in advance, and that's what's contained in here. What I want to urge committee members to do is to read them so as to allow the deputants not to read word for word but rather to speak to it very briefly to allow for a dialogue between members and the deputants.

The agenda for today is opening statement by the minister, Alvin Curling, official opposition, and Elizabeth Witmer, third party critic. Then we'll have the technical briefing by ministry staff. At the end of that, we'll have a half an hour per caucus to ask questions of the minister and of the ministry staff on this matter.

I'd like to begin by welcoming the minister, Elaine Ziemba, to this committee, and we can begin with your half-hour on this issue. Welcome, Ms Ziemba.

**Hon Elaine Ziemba (Minister of Citizenship and Minister Responsible for Human Rights, Disability Issues, Seniors' Issues and Race Relations):** Thank you very much. It's a pleasure to be here today and to address the standing committee on a very important bill.

I do want to clarify one point. My understanding was that I would be here, obviously, to hear my critics and that there would be an opportunity for us to have a bit of an exchange at that point and then, unfortunately, time constraints being such that I would leave my very capable deputy minister to do the technical briefing. I don't know if that will be fine.

**The Chair:** That will be fine too.

**Hon Ms Ziemba:** Okay. I know that all the members of the committee and those who will be making presentations here during the upcoming weeks recognize the significance of the bill they are about to consider. I also know that they will participate in the hearings in full knowledge that the work done here will have a profound and lasting impact on the province of Ontario, the whole province of Ontario, and that is why I am very concerned and upset that the committee is not travelling. It is important in the democratic process that all of our citizens across Ontario have the opportunity to participate and be involved. I know that we all cherish the opinions of each of our citizens in Ontario and I hope that we're able to be inclusive in this process.

Bill 79 not only will bring fairness to the workplace and social justice to those who have been denied an equal place in Ontario society for far too long, but will also make a tremendous difference to rebuilding our economy. Because that is the case and because I know committee members recognize that to be the case, I have every confidence that they will work in cooperation with each other, with the presenters and with the legislative and ministry staff who are here to help in any way they can.

The committee hearing process, in other words, will be another vitally important, collaborative step in the development of a bill which owes its very existence to extensive consultation and cooperation. We would never have come as far as we have and we would never have been able to come to this committee with the kind of bill we have, had we not insisted on a far-reaching and wide-ranging consultation process from the beginning. It is my sincerest hope that this type of process will be continued in these hearings.

We have to remember that the individuals and organizations who have played such a crucial role in the development of Bill 79 have not always come to the discussion table from the same position or with the same points of view. Some of them in fact have come from environments which traditionally have been adversarial. Others have taken part in a process which



for years has been closed to them. Every participant has been aware that there has been much at stake not only for their own individual constituents, but for all of the people of Ontario. So it is quite remarkable that given participants of different backgrounds, different agendas and different needs, they have been able to work in partnership and to achieve what they have to date.

Because Bill 79 has been built upon an extensive consultation process, I would be remiss indeed if I did not take time today to acknowledge some of the many, many people and the groups who have given such an extraordinary amount of time and energy and effort to this bill.

First of all, I must highlight the work of the Employment Equity Commissioner, Juanita Westmoreland-Traoré. Since she became commissioner more than two years ago, she has demonstrated unwavering commitment. It is this spirit that has enabled her, with the assistance of her equally committed staff, to achieve a significant amount of work. She has travelled across the province on many occasions to bring together many different groups with different points of view. As well, she has held meetings and consulted widely with literally hundreds of designated groups as well as business and labour organizations.

The Deputy Minister, Naomi Alboim, and her predecessor, Stien Lal, and the team at the ministry have provided me with excellent support. We unfortunately don't get to see the behind-the-scenes work that goes into an initiative like this, but I can tell you that it has been significant and we owe every person on the employment equity team our gratitude.

I should mention that there has been considerable interministerial involvement and cooperation in the process of developing Bill 79 and the draft regulation.

The commissioner also has had the benefit of a considerable amount of experience and expertise from her two technical regulations committees. This work contributed to the government's development of the draft regulation.

My own technical advisory group has been an invaluable resource as we have worked together to try to ensure that the bill we have presented to the Legislature is practical, workable and, equally important, effective.

We should remember, of course, that in addition to the individuals who have worked with us on specific committees and working groups, there are large numbers of community, business, labour and designated group organizations who have made presentations, prepared briefs and met with us. Many of these organizations have limited financial and human resources, which has meant that many of their members have worked on employment equity on their own time and at their expense. Yet because they have recognized the import-

ance of this legislation, they have been prepared to give innumerable hours to the process over a long period of time. Their participation should be especially recognized.

#### 1410

I have to go back in time a little to acknowledge other key participants, because it is very important that we remember that, while our bill is the most progressive in the North America, as I have said before, employment equity is not a new concept in this country.

We should not forget Judge Rosalie Abella, for example, who, almost a decade ago, made an impassioned and pivotal plea for the need to take the issue of systemic discrimination in the workplace seriously and to understand the economic and social consequences of not doing so. The report she produced during her term as commissioner of the Commission of Inquiry on Equality in Employment remains a landmark document in the history of employment equity.

We should acknowledge as well the people, the organizations and the legislators who worked on the federal Employment Equity Act, and we mustn't forget the employers, trade unions and designated group leaders who, because of the requirements of the federal legislation, were among the first in Canada to develop employment equity initiatives. We have learned a great deal from the implementation of the federal legislation and the contractors' program.

We must also acknowledge those Ontario employers in the private, public and broader public sector, trade unions, professional associations and community groups that have been working on voluntary employment equity programs for many years. Many of these groups have worked in close partnership with another agency of the provincial government, the Ontario women's directorate, whose ground-breaking initiatives and programs have given us guidance and have played a major role in preparing the way for Bill 79.

Finally, I'd like to make sure that we thank the employers, bargaining agents and practitioners who helped us test and model the draft regulation before we released it two months ago today.

The Ontario organizations that have worked on employment equity initiatives over the years were true pioneers. They recognized a simple fact that is as true today as it was when these organizations made their first venture into employment equity. That simple fact is that times are changing and that the organizations that will emerge as the most successful organizations of the 21st century will be those that have changed with the times. They will be the organizations that have made the best use of the resources available to them.

The case for employment equity has been made by different people in different circumstances. But you'd be hard pressed to find a stronger case than that made



recently by Bob Sutherland, a vice-president with the Royal Bank of Canada.

As a federally regulated company, the Royal Bank has been required to implement an employment equity program. Listen to what Mr Sutherland had to say about that experience:

"...Royal Bank has undoubtedly benefited by gaining access to some very talented members of the workforce, many of whom we might not have discovered....The members of these groups aren't the only winners here. The entire organization wins with the infusion of new ideas, a broader perspective, better decision-making and greater sensitivity to all the cultures and diverse groups that we serve."

Mr Sutherland's remarks encapsulate what we have been saying over and over again. We all win with employment equity. Those who have been required to implement equity know it and those who have voluntarily implemented employment equity know it. But unfortunately we know that voluntary measures do not work in as far-reaching a manner as they should.

For whatever reason, there are still far too many organizations out there who do not grasp employment equity's proven potential. As a consequence, while aboriginal people, people with disabilities, racial minorities and women, the groups designated under Bill 79, have made some progress in achieving equity in the workplace, it has been far too little and far too slow.

Employers, trade unions, professional organizations and community groups have expended a considerable amount of time and energy on voluntary employment equity. We will learn from and build upon their experience. But the fact of the matter is that voluntary employment equity has not achieved the results we would like to have seen, the results we need to see.

This government feels that there is overwhelming evidence to show that members of designated groups, despite their levels of qualification, education and expertise, continue to face employment discrimination. Whether it is intentional or unintentional, it precludes them from participating equally in the workplace and, as a consequence, in society.

As a result, this government made mandatory employment equity a priority in its first speech from the throne.

In preparing the legislation that the committee will be reviewing over the next few weeks, we have kept a number of key goals and objects at the forefront of our deliberations.

Our goal has been to ensure that no person in Ontario is denied a job, a training opportunity or a promotion for reasons that have nothing to do with ability. In other words, we want to bring fairness into the workplace so that all people have an equal chance to participate in the workforce and to work at occupations that reflect their

qualifications and abilities. The designated groups have a right to be hired, trained and promoted in a work environment free of systemic or deliberate barriers that discriminate against them.

Our objectives have been to ensure that we prepare our labour force for the future, to maximize the potential of all our human resources and to develop legislation that is workable, realistic and effective.

No one disputes the fact that our labour force profile has been transformed in the past decade. There are more women in the labour force than ever before. Racial minorities form a larger pool of our population than ever before. More and more people with disabilities are living independently in their community. Many of the new entrants to the labour force are new Canadians with high levels of skill and education. The aboriginal population is producing more entrants into the labour force.

As a result, the labour pool is quite different today than it was even 10 years ago, so we cannot rely on traditional employment policies and practices to recruit from this pool. One of our objectives with Bill 79 has been to make absolutely sure that we use the entire pool if we want to secure future prosperity.

If we continue to hire, train and promote from a restricted pool of people, enormous human resource potential will be overlooked. Untold experience, knowledge and expertise will be wasted. The emotional toll that is taken when people are underemployed and their skills underutilized has a devastating effect. Designated groups deserve to have access to jobs and Ontario deserves the opportunity to have access to the contribution these groups have to make. The second objective has been to develop legislation that makes the best use of our most precious resources: our human resources.

Our third key objective has been to attempt to create legislation that is workable but that is also effective in achieving our goal. In other words, it must be flexible enough to take into account employers' special workplace realities and corporate cultures while still achieving the goal of a workplace that is reflective of the community.

It is not my intention to go through the bill on a section-by-section basis—the deputy minister will be doing that later this afternoon—but I wanted to highlight the objectives of the legislation, because I feel that they are critically important to an understanding of what the government is trying to achieve.

I spent some time at the beginning of my remarks talking about the consultation process, because today we have reached another milestone in the bill's development. I believe it is essential, through the committee hearings, to continue with the spirit of cooperation that has marked most of our journey so far. The purpose of the committee hearings is really very simple: It is to

ensure that we go forward to third reading and proclamation with a bill that is as effective, workable and practical as it can be. I think we should all keep that in mind as we listen to the presentations and as we make motions to amend the bill during clause-by-clause.

Employment equity is both a social justice and an economic issue. Of this there is no doubt. I cannot emphasize enough how very much we have to gain, in both human and economic terms, by recognizing people's worth and their abilities and by enabling them to achieve their potential. I hope that the committee members will recognize the important role they will be playing over the next few weeks in bringing fairness and equality to Ontario's workplaces and that they will be as proud of their work as I know I will be when employment equity becomes law in the province of Ontario. Thank you very much today.

1420

**The Chair:** Mr Curling, your statement?

**Mr Alvin Curling (Scarborough North):** Thank you, Madam Minister, for making that presentation. We all have looked forward to this day when we have the employment equity bill being debated and especially the most important part, the presentations of those who are concerned with this legislation and who come before us.

We fully agree with the minister that many people are denied employment opportunities, and there are other outstanding groups not included in this legislation, as you know, like the francophone groups, which you presume are designated so that they will of course have had their separate legislation in which to deal with employment equity, and they were excluded from this.

As you know, the Liberal Party is a strong advocate of employment equity. We believe that a plan should be implemented, of course, to break down both the systemic and the intentional discrimination that exists in our society. But what we must do is develop some commonsense approach to discrimination practices in the job market and beyond that, or even before we reach the job market because it is important that, many times when people are discriminated against, it's because of how they were treated even before they arrive in the job market.

We must, as a Legislature, be vigilant in identifying systemic and intentional discrimination practices. We must be in a position to assist employers in identifying those issues, and they are complex and not as easy on the surface as we look at it.

What we must do is that we must educate employers that this move is beneficial to their economic growth, and through recruiting the brightest and of course the best to serve within their employment. The Liberal Party's convinced, of course, that this can be done without any excessive bureaucratic procedures and burdensome expense to the employers. We believe in

legislation that is fair, as you have mentioned, and enforceable. Too often we just make laws and think that it's all over, and just by having the laws on the book is sufficient, but we must be able to enforce those laws when we see people breaking those laws. So only providing, as you would say, "incentives," does not address that problem. It does not ensure the uniform application of the legislation.

Employment equity is not only about access to the workplace; it's also about systemic barriers to employment, improved training and employment opportunities. This includes, of course, access to day care, one of the major concerns of women. We must ensure, and I believe in this very strongly, that the merit principle is preserved. I've mentioned quite often in the House about the report on access to trades and professions, because within this report it identifies groups of qualified personnel that have been denied opportunities to work in their field due to a lack of what people would call Canadian experience, a real loss to the continuing advancement of Ontario and a severe loss of self-esteem.

Self-esteem can be seen by the broken dreams that are found in hospitals, in jails, in psychiatric institutions and many times in our welfare system, but people could be rather productive if given the opportunities which are being denied because of so-called, as we said, Canadian experience or not being recognized for their academic achievements because they were educated outside of this country.

In regard to the aboriginal people, we are still not convinced that the bill and the regulation will address the perpetuated myths that act as systemic barriers, that block access to employment, and myths as you know that include such things as disparaging perceptions of aboriginals as unable to survive in this corporate or government structure, myths that there are no qualified aboriginals to fill the position, myths that aboriginals are generally not interested in employment opportunities. Those things exist not only in the aboriginal people but in corporations. This has been fed consistently to our community, and we must do something in order to break those myths down.

When it comes to the disabled in this employment equity bill, the disabilities impose additional costs, as you know, on individuals; they impose additional costs on family, of course, as well as our society. People with disabilities are different from other groups. As a result, programs premised upon assisting targeted individuals simply to access jobs may not be appropriate. We must be doing something additional in regard to the disabled.

In short, there are no inherent productivity-related differentials that could not be eliminated in principle. People with disabilities in the workplace are an exception among the designated groups. They are thought to be limited at work and not desirous of regular employ-



ment and so on. Disabilities are generally recognized as limiting rather than eliminating work effort. There will always remain a residual amount of productivity-justified differential between those with and those without any work functional limitation.

We believe in a cooperative approach to employment equity rather than a confrontational approach—you mentioned that, Madam Minister, and I agree with that—and reject absolutely an adversarial approach. We do, however, feel that mandatory or—whatever word we want to use—enforceable legislation is essential to bring about the changes that are necessary, because we have found that just by asking people to do something, it takes such a long time and deprives people of their contribution and sometimes, of course, the benefit it has to society as a whole.

We do not need any additional bureaucracy and I strongly believe in that. It seems to me that we can always come up with a new department to do the job and feel that it's all done because we have a new bureaucracy. Of course, you know that we already have the Ontario Human Rights Commission and it is under severe criticism of its progress and its efficiency. We have the Ombudsman and the Pay Equity Commission. What we need to do is use the existing bureaucracy effectively to achieve our equity goals, and it can be done. Some may disagree on that, but I feel that if we look rather closely at these commissions and bureaucracy, the expertise is there to do so.

When I looked at the bill, I was extremely concerned about the kind of double standard that is there. The role assigned to bargaining agents will make the process even more complicated and costly, especially where more than one bargaining unit is involved.

The legislation failed to clearly explain what is meant by "joint responsibility."

The legislation does not provide time frames or even guidelines for the resolution of disputes between an employer and bargaining agent. As you know, time is of extreme importance to individuals whenever they have a concern and have a job loss because of discrimination. I don't need to pull you back into the situation again of the Human Rights Commission where people are waiting three and four years in order to get something settled and are not even quite sure what bureaucracy they should go through.

In regard to the same bargaining agent, if an employer and bargaining agent cannot agree on an employment equity plan, the matter is referred to the commissioner. There are no guidelines with respect to how long the commissioner may take to resolve such a dispute. The role assigned to the commission and to the tribunal will lead, I feel, to the creation of the same type of backlog as I said is now evident in the Human Rights Commission.

In regard to one specific part which will be raised later on—and we hope you will address that in amendments to the bill or to the regulation—the guarantee of union seniority rights effectively ensures a promotion within an organization will be sealed off. Thus, the bill only addresses access to the workplace and not access to higher levels, meaning a promotion within the organization or company. I want you to re-examine that, because it seems to me that the unions had concerns about this when you were drafting this, and in your consultation maybe some agreement was made here to protect that.

1430

Clearly the protection of union seniority rights conflicts then with the objectives of employment equity as it constitutes a barrier to mobility within the organization or with the company.

Mr Chairman, the minister cannot have her cake and eat it at the same time.

**The Chair:** Are you sure?

**Mr Curling:** Sometimes they do try, but it doesn't happen.

So at a glance, this proposed legislation seems admirable, of course, and positive, but we're not here just to say the nice words of employment equity; we're here to make sure that we have one of the most effective employment equity legislations ever. I know that sounds rather good, but the fact is, to do so we have to be rather detailed and make sure there are no slips and no cracks that one can fall between. But, really, upon scrutiny, it's apparent that it really guarantees very little. My concern is that we cannot come this far and not deliver. I know my colleagues on this side—I won't speak for them all; they'll have the opportunity to ask questions—would like to see a good employment equity that is fair.

Designated groups need legislation that when applied will produce real change. Therefore, we cannot support the employment equity legislation that is being proposed by you today. I am confident that I will support this employment equity bill at the end of the day because by listening, by amending and by understanding, which I know you have the capacity to do and the government should have the capacity to do, and then changing we'll have a good employment equity bill.

But the piecemeal approach that the government has chosen to take with respect to the equity issues is appalling really—almost bordering on appalling. Previous studies such as, as I mentioned before, on access to trades and the Cornish report suggest centralization on all equity issues rather than having numerous bureaucracy all over the place.

We must examine this employment equity bill over the next four weeks and listen to the individuals carefully to understand their concerns, because within that we



will then have a good bill that will bring about real changes.

**The Chair:** Thank you, Mr Curling, for your statement. Ms Witmer.

**Mrs Elizabeth Witmer (Waterloo North):** First of all, I'd like to congratulate the minister on her presentation. I know that she certainly is very sincere in her commitment to bring fairness to the workplace and I know that she has endeavoured to consult as widely as possible with individuals and groups throughout the province. Certainly for that I congratulate her, and I think she certainly has done the groundwork extremely well.

She's indicated that she would like to see a profound and lasting impact on people in this province. I'd also like to see that. I hope, however, that the lasting impact will be positive, but I have to tell you, I am concerned about the legislation and I'm not sure that the legislation as presently written is going to have a very positive impact on people. I think it's flawed at the present time. This bill is going to require some very major changes and I hope that the minister will be as amenable to making those changes as she has been in the consultation that has taken place already.

I've had an opportunity to meet with many groups since the regulations were released in June. I've met with the visible minorities, I've met with the disabled, I've met with women, and I regret that I don't think I've met with aboriginals. However, as the bill presently stands, I can assure you that there are many concerns from the designated groups as well as other people and certainly there is a need for some very major amendments to take place to the legislation.

Yes, we all believe in fairness and equality in the workplace. I think we would all agree we want to do everything possible to maximize the potential of all individuals in this province. What we need to do is eliminate discrimination in employment practices. As a result, then, we will have organizations that operate in a very positive manner.

However, I believe very strongly—and that's an issue that this bill does not address. This is the greatest concern that our party has: We believe that the employer needs to preserve the right to hire the best-qualified person for the job. That is the merit principle and it is not contained within this bill. That's an issue I'm going to speak to just a little later, but that is our greatest concern. There is no preservation of the best-qualified-person-for-the-job or the merit principle.

I guess I'm also concerned because in Bill 79 I see the government giving total responsibility to the employer community for employment equity. I believe that there are key barriers to employment equity which need to be addressed by the government, and key to everything else in this province are education and

training. If we don't provide individuals with training and educational opportunities, obviously they're not going to be able to access some of these employment opportunities, particularly at a time when our economy is changing and individuals are going to need more education and training than ever before, if they're going to access the new high-technology positions. I just don't see the government taking many, or any, positive steps to ensure that members from the four designated groups—women, those with disabilities, visible minorities or aboriginal Canadians—are provided with those opportunities.

Another real barrier to employment opportunities which I've talked about before is language training. With the increasing number of immigrants coming to our shores and seeking residence in this province, it is absolutely essential that we provide them with English opportunities.

Unless some of those areas and some of those barriers are addressed by the government, you can give all of the responsibility you want to employers, but you're not going to achieve equal opportunity for all individuals in the marketplace. I hope the government will certainly take a look at working with people in this province to ensure there is equal opportunity for individuals.

I believe very strongly, as does our party, that every individual in this province must have the same opportunity for advancement. However, we have to remember that no school in this province, no training centre, no government, is ever going to be able to ensure equality of outcome; we can only ensure equality of opportunity. When I take a look at this bill, I really do believe the government is trying to ensure equality of outcome, and that is totally impossible. We just can't do that. All we can do in this province and all this legislation can do is provide for equal employment opportunities for everyone.

As I've indicated, I believe the bill requires some very major changes. I believe there are very serious flaws. What we're trying to do here is legislate the makeup of the workforce, and we're going to enforce it by an administrative monitoring procedure. You have distinctions that employers have been prohibited from making under the Ontario Human Rights Code, such as race, which are now going to become distinctions which employers are required to make for the purpose of achieving employment equity goals. This legislation, unfortunately, is going to create hiring quotas and other preferential policies. As I've said before, what it's attempting to do is mandate equality of outcome, whereas the focus of the government should be to create an environment in which there is equality of opportunity.

The government needs to remember that there is a difference between equality, being equal, and equity, being fair. It's this very difference which raises the

questions about reverse discrimination, about tokenism, about quotas and the demise of the merit principle. We should be focusing on the equity goal, not the equality goal. The best person should get the job, the promotion, the scholarship or whatever. A quota-driven system may produce numbers, but it's never, ever going to produce fairness in the eyes of the people in this province. People don't want special favours; they want full and fair equity in the hiring process, and that's where we should be attempting to make sure that this bill provides that type of opportunity.

1440

I mentioned before that I've talked to young people. You know, most of them have very serious reservations about Bill 79. Most of them feel very confident that they can be successful, they can gain entrance to college, university, a job, based on their own merit, based on their own ability.

I mentioned in my presentation in the House about the young woman that I met when I was speaking one day. She said to me: "You know, Mrs Witmer, I'm so disgusted, I'm so hurt, because I know I was accepted at a university in this province"—and I'm not going to name the university—"because I was able to check off four boxes. I was able to check off I was a female, I was able to check off that I'm disabled and I was able to check off that I'm a visible minority because I'm black." She said, "I wanted to get into that university because of my ability, not because of my disability and not because I happen to be able to check off three out of four boxes." I think that's what we need to remember: People don't want special favours; they want full and fair equity at all times.

With Bill 79 we're going to see legally enforced numerical targets for the hiring of aboriginals, the disabled, racial minorities and women. Rather than treating all individuals fairly and impartially, it's going to require that the four designated groups be explicitly favoured in occupations where they are underrepresented; in other words, where their participation does not match their percentage of the population.

Unfortunately, this bill is not even impartial in its enforcement of this principle, because it doesn't require that men be favoured in professions such as nursing or library science and primary school teaching, where they are underrepresented. The discrimination the bill implies is tacitly recognized in the legislation itself, which includes a clause that exempts it from the provisions of the Ontario Human Rights Code, and of course that's the principal legal mechanism for fighting discrimination in Ontario.

I think that the government has not totally taken into consideration how complicated this issue really is. It encompasses so many, many, many dimensions. It's not as simple as we imagine it. We have to consider education. We have to consider training. We have to consider

culture. We have to consider demographics, society, attitudes, qualifications and personal ambition. I'm not sure that's all being considered.

We also have to remember, as I said before, that the present training and educational structure within our province has not been designed to adequately prepare the designated groups for many jobs in our society. The government, as I said before, has to do something to ensure that we do have a qualified workforce available. At the present time, there is absolutely no way that a workforce can reflect the face of Ontario, because we don't have sufficient numbers of qualified workers available within the designated groups.

We simply have to take a look at what happened in Kitchener with the firefighters. Unfortunately, we had qualified males but we didn't have qualified members from the designated groups. So now they're going to do things a little differently: They're going to prepare people beforehand in order that they can all compete on the same basis for the final job. Those are the types of changes that we need to be making: preparing people, getting them ready, so that they can compete on a fair and equal basis.

You can't expect employers to hire people who don't have the necessary qualifications. If you're going to do that, you're discriminating against those who are outside of the four designated groups, because you're still going to expect them to have the required qualifications.

I want to go to the preamble now. There is no part of the bill, other than the fact that there's no mention of the merit principle, that concerns me as much as the preamble. It's without precedent in any Ontario statute—the form and the content. It concludes that underrepresentation of the four disadvantaged groups in the workforce occurs as a result of "systemic and intentional discrimination" by employers. Then it states in effect that the people of Ontario recognize that employers have been guilty of widespread illegal discrimination.

The assumptions of this bill, of this preamble—it's misleading. It fails to take into consideration or acknowledge in any way that underrepresentation of the designated groups in the workplace results from many historical, many social and demographic reasons; for example, changes in immigration patterns which have changed the racial makeup of the community, but because these individuals have only recently arrived on our shores, obviously they're not reflected in the pre-existing workforce. That's not taken into consideration.

Another thing is self-selection by members of designated groups for certain types of work. Again, we don't consider the educational and the training opportunities not being available.

We fail to consider that lack of child care has played an important part in women in particular accessing. I can personally speak to that myself as a female. I know



the problems that women face as far as getting good child care is concerned. That's been an obstacle and that's been a barrier, and that's perhaps why many women are underrepresented.

Also, transportation for the disabled—that's another reason there's been underrepresentation of the disabled—and the operation of seniority principles and the operation of collective agreements.

Those are all reasons why there's been underrepresentation of the designated groups in the workplace. It's not just because of "systemic and intentional discrimination" by employers. If that's the premise we're going to put out there, that's going to be met with resistance rather than goodwill from the employers, so I'm very concerned about that particular section.

I guess the problem with mandatory employment equity, with mandatory quotas, is that it focuses on statistics and not the people who need a fair chance in the workforce. As I said before, it seems to foist all responsibility for achieving equality upon employers, it ignores the reasons why the barriers exist, it fails to account for the complexities of workforce demographics and it doesn't allow the hiring of the individual who is the best person for the job.

Unfortunately, quotas and mandatory employment equity are going to eliminate free and fair competition in this province.

I want to conclude by focusing on a few problems with the bill. First of all, there's going to be some problem in the area of definition and identifying members of the designated groups. That's not contained within the bill but that's been deferred to the regulations. Self-identification is going to pose a very practical problem for employers in that we know that employees are going to decline, some of them, to describe themselves as being members of a racial minority or disabled.

For example, an employer may hire a person with a disability that is not visible and even discuss with the employee requirements of accommodation, but the employee may not consider him or herself to be disadvantaged in employment or may object as a matter of dignity or privacy to being identified as disabled. Similarly, a Canadian-born person or citizen may self-identify as Canadian only and object to being identified by a racial group.

1450

Reluctance to self-identify is going to affect the employer's success in achieving his or her numerical targets, and unfortunately, presently there is no mechanism in Bill 79 for the employer to dispute a failure to self-identify even if the person's membership in the disadvantaged group is obvious. I think that's a flaw of the legislation.

Another issue of concern is in the area of confidentiality. This bill provides the right on the part of bargaining agents to have access to information held by the employer. This access to information could lead to abuses, and certainly there needs to be serious consideration given to providing confidentiality to the individual and also to the business plan which the business community has in its possession. There needs to be much more attention given to providing confidentiality within the legislation.

Quotas: I talked about the quotas before. The government says Bill 79 is not based on quotas, but we know it's a number-driven system. If you take a look at the dictionary, it defines "quota" as "the share or proportion assigned to each in a division," and the objective of Bill 79 is to ensure that "Every employer's workforce, in all occupational categories and at all levels of employment" reflects the designated groups' representation in the population in the community. If that's the objective of Bill 79, it certainly fits the dictionary definition of "quota." I can tell you, the issue of quotas is a very serious concern for people in this province.

Seniority systems: I've indicated that that's going to present a problem, and we certainly need to take a look at addressing that.

Another area of concern is the opportunities for change at the present time. The opportunities for any change taking place at the present time in the workforce are limited because of the economic situation; there's not a lot of new job creation taking place. I think we're going to have to recognize that. It's going to be very difficult for employers to meet the numerical goals within a timetable because of the recession we're experiencing. Certainly, the government needs to give consideration to that.

We need to take a look at the cost. There is a tremendous compliance cost associated with this particular bill. I know we've said before that this legislation is an employer's nightmare, but it's a lawyer's and a consultant's dream because a proper review is going to require either that you retrain one of your employees or that you hire a lawyer or a consultant. Certainly, there's going to be a commitment of time and money that's involved. I guess we have to ask ourselves the question, will the administrative cost of employment equity affect the ability of Ontario businesses to remain competitive, particularly at this time?

Another cost we have to look at is the cost of the Employment Equity Commission. Again, there's a budget. The estimates for 1993-94 indicate it's going to cost \$6 million; when the bill was first introduced in June 1992, we heard it was going to cost \$4 million. So you can see the cost has already increased \$2 million, this at a time when we've just tried to slash costs and we've all gone through the social contract process. We need to remember there is a tremendous cost involved



in the application of this bill, not only for the employer community but also for the government and then, in turn, the taxpayers of this province.

I want to make a point that, unfortunately, during the consultation process the government didn't respond to the participants who asked that the high cost of compliance be recognized and requested that the government provide them with some financial grants, incentives and low-cost or free technical resources to ease the financial burden of compliance. I would like the minister to respond later about why this request for assistance has been totally ignored by the government, because I think there was an opportunity here for the government to provide some partnership and some support to the employer community in order to reduce the cost and reduce the duplication.

I think we are very concerned as well about the power of the commission, because the commission may, without any hearing whatsoever, order an employer to take any steps specified by the commission that it considers just in achieving compliance with the legislation, and the failure to comply will result in a \$50,000 penalty.

If we take a look at the employment equity legislation, there's certainly much that needs to be changed. I think we're all committed to the fact that we want to see fairness and equity in the workplace but, as I've indicated before, we must work together. I hope the minister will be amenable to making some major amendments to the legislation, because certainly that's going to be required.

We want to make sure that at the end of the day people in this province feel united, that they do not feel divided, that they do not feel separate, that they do not feel someone has been promoted or been put into a position because they're a member of the designated group. I would ask the minister to give very, very serious consideration to putting into the bill the right that the employer will have to always, always hire the best-qualified person for the job. The merit principle must be preserved if we're really going to have fairness and equity in this province.

**The Chair:** Thank you, Mrs Witmer, for your statement. Given that the minister cannot stay until 6 o'clock, what I would like to propose is that we give an opportunity to the opposition members, and government members as well, to ask questions of the minister for as long as the minister can stay. I'd like to go to the official opposition critic to begin the questions.

**Mr Curling:** Madam Minister, you know I have been concerned about Access!, Task Force on Access to Professions and Trades in Ontario. I believe it was an excellent report, and I think your government, too, applauded that report. It has an impact on employment equity. Will you be implementing the recommendations of Access? If you are, when will you be doing so? If

you are not, why would you not implement those recommendations of the Access to professions and trades report?

**Hon Ms Ziemba:** Actually, I'm very pleased you've asked that question because it raises issues that our colleague Mrs Witmer raised, that people coming from other places perhaps do not have the training or do not have the expertise and the education. We know full well that they do, and we value their input into society. We know that people come from many different places with a lot of good expertise that we should be using.

**1500**

We announced, as you remember, I guess it was last December, a pilot project to look into working with professional organizations, educational bodies and community groups to see how we can bring about those changes. We have just started and embarked on those particular projects, so it's still too early for us to assess the results. Some of the projects have not quite started and will be starting up in a short time.

We're expanding that to include some other organizations and we're getting some good feedback from professional bodies that want to share with us and with the educational organizations that exist and that can help us, and also with the community groups, with their knowledge and information of what their communities bring to this province. We'll be assessing that, we'll be working very closely with those various bodies and we hope that assessment will give us some feedback into how we can bring about those changes.

**Mr Curling:** I'm hearing from you then that you agree with that report. You will continue to work with the professional groups to implement those recommendations that are placed in that report.

**Hon Ms Ziemba:** I don't think anybody could deny that there are people who come to this province with very well founded experience in education who have not had the opportunity to explore their careers in that particular expertise they have gained from other places. As well, just looking at my deputy minister, who worked very hard with the prior learning assessment areas, that brings into account some very unique ways that we can, in the Ministry of Education and Training, develop and continue working with people who come from other places with their skills, and we will continue to do so.

**Mr Curling:** Let me just pursue this a little bit, because what you just said is what the report is all about, so we don't want to go back to re-examine it. I just want to know, and first maybe I should ask you, do you accept that report as a good report, and that the recommendation therein is something that should be implemented?

**Hon Ms Ziemba:** As I said, we are looking at the preliminary pilot project so that we can experiment and

work on that. I think that will give us further development and probably that can work with those communities so we can make it happen. I think that at this particular time, until we have worked on those pilot projects, we need to develop a little bit further and work with those professional bodies as well. As I've said, there's been some very good interest in the professional bodies, the educational colleges and universities and as well the community organizations to work together in partnership to develop some very good pilot projects that we are looking forward to seeing develop and then assessing their outcomes.

**Mr Curling:** I sought legal counsel a while ago, and legal counsel tells me that you said no.

Do you have a supplementary to that?

**Mr Tim Murphy (St George-St David):** Yes, if I can. Just to follow up, my understanding is that in the recent social contract negotiations, an agreement was struck with the Ontario Medical Association, I believe, regarding access to the profession of being a doctor and in terms of excluding those outside the province. In that regard, I'm wondering whether you were consulted about the impact of that in terms of an employment equity goal of making sure that, for example, doctors represented the designated groups in our society and what impact that would have on many of the minority and other groups in our community and in Metro Toronto, people who have talked to me about the impact of not being able to get their credentials accepted here. I'm wondering if you were consulted about that agreement and if so, what you said and what you think about the impact of that agreement, for example, in the context of the application of this very bill.

**Hon Ms Ziemba:** First of all, there are two parts to that question, although it appears that there's only one part. First of all, in our work prior to the social contract and when we were developing our work to start our pilot projects, we consulted with the Ministry of Health to see how our pilot projects would impact on its particular situation and its particular needs at this particular time. We also have been working with the federal government in trying to come up with an immigration agreement.

The reason I bring that in at this particular part of my response to you is that we recognize very clearly that often people come to this province and to this country with very full intentions of going on with their careers. They're given a point system in the Immigration Act so that the higher learning you have and the higher training you have, the higher points you bring with you and so the quicker you come to this country.

We've been very clear that we want to work with the federal government to see that there would be a fairer system, that when our province has needs, we are consulted about those needs, that when our province recognizes that perhaps the line is full right now enter-

ing into a career, we are consulted at the same time. Those are very special recognitions. I think it's very unfair how the system has worked in the past, because people do anticipate coming to this country to be able to explore their careers, and unfortunately there are barriers in place.

We, as I said earlier, with \$2 million that we've put into a kitty, are going to look at pilot projects bringing together a partnership of not only the professional organizations and the community groups, but the places of higher learning, the colleges and universities. As well, we have an apprenticeship working program that will incorporate some of those people who have come to this place.

We have consulted, but it's been an ongoing dialogue of many months prior to the social contract.

**Mr Murphy:** That was a long answer that I'm not sure answered the very specific question I put, which related to the social contract agreement with the OMA regarding the restriction on access of people outside the province and its impact on what are possibly designated groups. I think there's a real problem of restricting doctors, and there's possible impact on other areas. I've talked with people from the Filipino community who have fully qualified in the Philippines, have come here and are unable to practise. I'm wondering whether you were consulted as to the impact on employment equity of that agreement with the OMA.

**Hon Ms Ziemba:** I guess I tried to answer in a very comprehensive way, which I tend to try to do, to say to you that we discussed the concerns of the Ministry of Health prior to the social contract, when we were developing our program on access to professions and trades. We dialogued with them very clearly way before. We've been working with them, I guess, almost a year now on their needs and looking at our human resource needs and the development of those human resource needs for this province, as we did with other ministries in other areas as well.

**Mr Curling:** I'm going to try to get a couple of more questions in.

**The Chair:** One more question.

**Mr Curling:** All right, one. I have five or six, but I'll take one.

Are you considering, Madam Minister, changes to the contentious section that guarantees the unions seniority rights of call-back and layoff but which conflicts really with what you want to achieve in employment equity?

**Hon Ms Ziemba:** We have had long, lengthy discussions about that particular clause. We had that prior to developing the legislation. The equity-seeking groups and the designated groups members we have consulted with on an ongoing basis recognize that to make sure there is fairness in the workplace continually, seniority and layoff and recall are very important for



them as well. They have often stated that they believed in that principle as well.

I'm looking forward to hearing the comments that will come from the witnesses as they come before the committee on this particular issue. I'm sure you'll be asking many different groups their concerns and you'll probably ask them that particular question. I will look forward to hearing those responses.

**Mr Curling:** So you don't intend to change it?

**Hon Ms Ziemba:** I didn't say that, my honourable colleague. I did say that I think this process means that we listen, and we listen carefully. The process of building this bill and the regulations was a process of listening very carefully to all the comments. To tell you at this particular time that I am ready to make an amendment or not ready to make an amendment would preclude all those wonderful people who are bringing forth their deputations. I want to listen very carefully to those comments.

1510

**The Chair:** Mr Murphy, one final question.

**Mr Murphy:** In the Opening Doors report there were two groups in particular that were identified as making representations to be included as designated groups and were not included as designated groups; that is, the francophone community and the gay and lesbian community. My question is, why are those excluded?

**Hon Ms Ziemba:** That's a very fair question. When we went out and when the commissioner went out to consult, those two groups were asked to be included in the consultation. We thought that was very important. Now, I want to separate the two groups, because I think they're very different.

The francophone community: As we look on the designation in the OPS, we have continued to share that this will be a designated group member in the Ontario public sector. When we looked outside the Ontario public sector and looked into the other communities across Ontario, we found that there was not enough information for us to base, at this particular time, that that would be a designated group. However, we are not closed to opening that door and have stated very clearly that we will continue to work with the minister who is responsible for francophone affairs.

We set up an interministerial committee to look at this particular issue and to see if we can encourage people to submit their hard-core stats so that we can proceed with making a true judgement. I would say to you that we still need some more information and we still need to look at this, if we were to include them, but they will still be included in the OPS.

The other issue of gay men and lesbian women to be included as a designated group member: We discussed this with many different groups—not only the commissioner, but myself personally—and have a deep commit-

ment, as you know, with this government. I commend you for your private member's bill, because it's extremely important that we take into account that no person is discriminated against because of their sexual orientation. I commend you for that and I know that the Attorney General is looking forward to making sure that we have taken those particular issues into account.

As we spoke to groups of people across the province, whether they were in organized groups or not, people wanted, especially from the gay and lesbian community, to make sure that there was no sexual harassment at the workplace. But most of the comments we received back were that they were not ready to self-identify. I think that is a concern we still have to look at and have to work with. It is, I think, not quite clear, even when we look at our statistics, that we can find the information to say that people have been denied an opportunity to actually apply for a position.

I think we can accommodate those particular concerns in a different fashion, and that would be by having sexual harassment provisions in the workplace, in an employment equity plan, yes, but not necessarily having them as a designated group maybe.

**The Chair:** Thank you, Madam Minister. Mrs Witmer.

**Mrs Witmer:** I want to deal with the preamble first. As I indicated to you, I feel it's very negative, and certainly I feel that it accuses employers in this province of having behaved in a very discriminatory manner. Have you given any consideration to making it more positive in order that employers would be much more willing to cooperate with the government? Why would you start out and accuse employers for all the wrongs? It's so negative. It's so contrary to anything that I believe in. I think you should be making a positive statement in a preamble.

**Hon Ms Ziemba:** We certainly will look forward to hearing the comments. I spoke to a group of people this morning over a breakfast meeting on that very same issue. I have a feeling that you've spoken to them as well. Certainly, if there's a way that we could take into account that would make the preamble—have people feel more comfortable. The intention was never that we are accusatory, because in fact what we have tried to do is work with the employers, especially the ones who have done such a fantastic job already in employment equity. We're learning from their experiences, benefiting from the work they've already done.

**Mrs Witmer:** I hope that will become a positive statement and a statement that will allow people the opportunity to feel much more willing to cooperate with the government in order that the interests of all the people in the province can be met.

I'd like to go back to the merit principle. As I indicated to you, I certainly feel very strongly that the



merit principle should be enshrined in the legislation, as does the Ontario PC Party. Are you willing to give some consideration to the fact that the best-qualified person will always be hired by the employer, that the employer has the right to hire the best-qualified person for the job?

**Hon Ms Ziemba:** The employer will always have that opportunity, but I guess I have to go back to your remarks, because I think in the designated group members we probably will find the best-qualified people will—

**Mrs Witmer:** But what if not?

**Hon Ms Ziemba:** Just hold on, now. I think that we do have within those designated-group people already very well qualified people who are able to do the job, who are trained, who are educated and who are able to take on the duties in the workplace, and this is what employment equity is about. It's about ensuring that they do have those opportunities.

In your comments earlier you talked about education and training and you talked about language training. I have to say to you I agree with you that education and training and language training are extremely important. I will sound very political at this particular point, but this is one of the reasons we brought in the Jobs Ontario initiative. It is not just about capital funding, but it's also about training people who need to get retrained to get back into the workplace, and to give employers the opportunity for retraining people as well. So that's one initiative that I think we've moved on very quickly.

Also with education and training, the Minister of Education has just released, I believe it was the beginning of July, a document about making sure that there is not discrimination in the educational system, that every student is given an equal opportunity and that it is made sure in the curriculum that people feel their worth and are being able to continue on in the educational system. I think that particular document will do a lot of good in the future training of our young people and will give people the opportunity to move forward and not to drop out.

But I would still go back to you to say that when we look at language training, and you talked about people coming from other countries who perhaps have not had the opportunity of learning English or French and their mother tongue is not those particular languages, we share the responsibility with the federal government and we find ourselves in a bind because we do not have the jurisdiction in Ontario, as Quebec does, to have the full jurisdiction over immigration.

So we try our best, and I think we do a wonderful job with the programs we have at Ontario Welcome House, with the funding we give to community organizations, such as the Ontario Council of Agencies Serving Immigrants and other groups—skills for training—that

provide people with English-as-a-second-language training. In fact the previous government had started a program with training in the workplace, which is a wonderful opportunity for people to take the chance while they're working, right in their own workplace, to learn English and to learn it when it comes to their own workplace, and that has worked very well.

So we're trying to improve on that, but we also need the cooperation of the federal government in its training with the language.

But to go back to you, I would sum up to say that I still believe wholeheartedly, as this government does, that designated-group members, whether they're women, people with disabilities, visible minorities or aboriginal people, do have qualifications, they're well trained, they're able to carry on in the job market and they want to be able to do so and they could, I think, very easily compete on the merit system.

**Mrs Witmer:** I hear you saying then that there will not be the right of the employer to hire the best-qualified candidate; you're not willing to preserve the merit principle within Bill 79.

**Hon Ms Ziemba:** Can I just say that there's nothing in the act that says an employer must hire an unqualified person. In fact the act says the best-qualified person. So I think that employers who are practising employment equity already know that, that they do hire the best-qualified person for the job.

**Mrs Witmer:** However, the legislation would make it so that an employer needs to meet the numerical goals and timetables and the quotas, and obviously at times the perception is going to be that certain people are receiving special treatment and that people who have earned a position have done so not because of merit but because they were hired to meet a quota. I guess unless you make it clear within the act that the merit principle is preserved, that unfortunately will be the perception.

1520

**Hon Ms Ziemba:** First of all, there are no quotas in this particular bill and I have to state this again. A quota system would be the government saying to each employer in this province, "You must hire X number of people by a certain date." We are not saying that. We are asking the employers to sit down, to look at their respective workplaces, look at their respective communities that they exist in and then, with their own timetables, knowing best for themselves when they can hire people, they will judge when they are going to open the doors and when they are going to have people in their workplace. So it's really up to the employer, which is not a quota system; it's the employers setting their own goals and timetables.

Again, I say to you that it's extremely important in this process, as we listen to people who come forward with their comments and their interpretation of the act,

that we all listen very carefully. If there is a perception out there that employers will be asked to hire unqualified people, then we will have to look to make sure that the act instils the confidence and that it says the best-qualified persons fill it. But we still have a long way to go and we have to listen very carefully.

**Mrs Witmer:** Let's talk about one other thing and then I'm going to give Mr Tilson an opportunity to ask questions. Today we discussed the timing of this committee. As you probably know, we have three weeks of hearings that have been set aside now and I understand that the fourth week probably will be devoted to hearings as well, because we've had more individuals come forward recently than we had anticipated.

I'd like to discuss with you the question of the clause-by-clause. It had been suggested to us that in the fourth week we would do clause-by-clause of this bill. I know you've spent a tremendous amount of time already in consultation—several years—and I know you want a bill that certainly is going to be fair and effective. I guess my feeling is that after only three weeks of hearings, if that's going to be the case, it would be totally impossible to do clause-by-clause the fourth week. For us to really, truly take into serious consideration all of the presentations that are made and for our staffs to put together the appropriate amendments is almost impossible. Are you willing to postpone the clause-by-clause deliberations until the House resumes in September?

**Hon Ms Ziemba:** Thank you very much for asking my advice, but my understanding is that, in the standing committee process in this democratic process that we have, it's the committee that makes these decisions. I would hate to put my feelings on the table and preclude the committee. It seems to me that that's not the way things are done, but I thank you for giving me the opportunity to be asked and will take your advice under consideration.

**Mrs Witmer:** I'd like to pursue that, because I was a little surprised at the response I got today. I personally feel that we've invited people in to make representation and, as I say, we now have three weeks of groups and individuals scheduled and it appears that maybe we'll go into the fourth week and maybe we won't. However, you've devoted so much time and yet I heard your representatives say to us today, "We want it all done in four weeks." I guess I'm surprised that for a government that spent so much time consulting, we're now being told today, "You don't have an extra couple of weeks to take into consideration all of the presentations." We're only going to have one weekend, which is Labour Day, and then we're going to go into clause-by-clause.

I'm a little concerned that this is where the government's been heading: "Three weeks of committee and then we'll just wrap it up and tuck it away, because we

want to make sure that the people in this province don't really know about this issue, because they'll be busy with first week back to school." I have to tell you, that's the impression I got today and I'm disappointed. If we're going to do justice to employment equity, if this bill is truly going to be fair, we need time, all three parties, to give serious consideration to the three weeks of deliberations, and you can't do that in one Labour Day weekend. So I hope you will give advice to your party that we would have more of an opportunity before we would come back and do the clause-by-clause.

**Hon Ms Ziemba:** I'd like to thank you for sharing your concerns with me, first of all, because my understanding was that at the very beginning, when the subcommittee first sat down to discuss what the committee was going to do, the government members wanted to have four weeks of hearings and the subcommittee—which, of course, means that the representatives in the opposition parties have the majority—decided on three weeks. It has now gone back to four weeks, which I'm pleased about because I think we needed four weeks.

I was also very disappointed that the subcommittee decided they would not travel, because I think this is a very large province and people from across Ontario will be sharing in this initiative, and not everybody has three days to set aside to come to Toronto. When I say three days, people from Thunder Bay need a day to travel here and a day to travel back and then a day at committee. Not everybody can take three days out of their lives to come to a committee hearing. So I was disappointed when the subcommittee made that decision, and again, as I said, the opposition parties have the majority on the subcommittee.

I'm equally pleased to hear that you want to make sure that people have full opportunity to—and I know that you were not present at the subcommittee meetings. I'm not saying that it was you personally.

**Mrs Witmer:** As was Mr Curling.

**Hon Ms Ziemba:** That's right. I spoke to Mr Curling about it and I know we share the same concerns about that particular issue, and about not advertising as well.

I hear what you're saying, but there is a process in place, and the way the parliamentary system works in this province and in this country is that the committee makes those decisions. I will caucus with my colleagues, but it certainly will be a decision for all of the committee members to make.

**The Chair:** Madam Minister, I just wanted, for clarity, to say that the subcommittee was dealing with this today. We did not conclude it. The concerns were raised. Tomorrow we will meet again as a subcommittee to try to address some of the concerns that have been raised.



I'd like to have Mr Tilson ask one final question and then we'll move on.

**Mr David Tilson (Dufferin-Peel):** Madam Minister, on the issue of the reverse-onus principle which has surfaced in the media and in the opposition questions in the House—in other words, of being guilty until proven innocent, of proving that you don't behave like a racist or a sexist—the fear that's been expressed on a number of issues has been increasing. It surfaced in the House in Mr Lewis's report on the Yonge Street riots. It surfaced in Mary Cornish's report, prepared at your request, on achieving equality. It surfaced in a report on the human rights reform, in the report on the sexual abuse of patients which was prepared by the College of Physicians and Surgeons, and there have been a number of other things in which your government, on a whole number of policies—and now, as Mrs Witmer referred to in her opening remarks in response to your presentation, in the preamble of Bill 79. In other words, the reverse onus is there. Some of the statements that are made in the preamble of Bill 79 are quite clearly an extension of the reverse-onus principle that has come out on these very many reports, which is so totally against all of the things that all of us, and I suspect including you, stand for.

I'd like you to comment on the fear that has been raised by people in opposition to your bill on the question of the reverse-onus principle.

**Hon Ms Ziemba:** First of all, when we hear people express those concerns, I think any change is a feeling of threat and people do worry about that change, and I would not be surprised to hear people be concerned about that.

**Mr Tilson:** You said in your preamble—it's not a fear, it's a fact, because it's right there, as Mrs Witmer has expressed.

**The Chair:** Mr Tilson, allow the minister to answer your question, please.

**Hon Ms Ziemba:** And as I said to your honourable colleague, this process of the bill has been one of consultation, has been one of dialogue, has been ongoing dialogue and comments, and we will continue to do that. If there is enough evidence to show that there needs to be some clarity put into the preamble, that certainly will be done so that we don't have people feeling that a reverse onus or reverse discrimination, however you want to call it, is there. We certainly will work with all of you to make sure we have the best wording that is possible.

1530

**Mr Tilson:** I think we need to act—

**The Chair:** We need to move on, Mr Tilson. I thought you had a supplementary, but we need to go on. Ms Carter?

**Ms Jenny Carter (Peterborough):** Minister, I know

you've already dialogued with Mrs Witmer on this point of whether the best person is getting the job, but it seems to me that this is such an important point that I want to go back to it. I felt that Mrs Witmer's presentation was really on a totally unsound basis, that she was assuming the bill was somehow working against the possibility of always hiring the best person for the job, which, as far as I can see, is quite unjustified.

I think a lot of assumptions are buried under that, that there's still a deep-seated feeling in a lot of people that people in these categories are not going to be the best person. If in the past and up till now the best person for the job always had been hired, even though there may be some unfairness in who gets qualifications and so on, then we would not now be needing to have this legislation; we would just be looking at the education and training side of it and that would be sufficient, because then the people who are visible minorities and so on would have the same qualifications.

But the real fact is that there are people with wonderful qualifications who have not got the jobs they're qualified for because they come into these categories. We feel absolutely certain that if the best person always gets the job, then the representation of the different groups out there in the community will happen automatically, and there's no question here of saying, "We're going to hire you because you're an aboriginal" or whatever.

I think this is the point we really have to make, because to bring in legislation that did require in any way that somebody who was not the best-qualified was going to be given priority because of the group he or she came into I think would be self-defeating and would not lead to a better society in the long run. I just wondered if you'd like to say a little more about that.

**Hon Ms Ziemba:** I thank you for this opportunity because I think that's very clear in our intention. Statistics show, and we talked about those statistics on many different occasions, that women, people with disabilities and visible minority and aboriginal people do have the qualifications, they're trained, they're able and wanting to work in their specific careers, but unfortunately are usually, if they are employed, under-represented in the workplace, meaning that they are not working in the workplace their qualifications intend them to do and they have taken on jobs only to be able to get into that workplace but not the ones they are qualified for.

Of course, I can go back through those statistics, and they're very clear on paper. Aboriginal people are very underrepresented in the workplace even though, when you see the college and university graduates, they sometimes have a higher graduation than the other people in the population. People with disabilities, now living in the community, going through the school system, having been through college and university,



very capable, very able to be represented in the workplace: They are not afforded the opportunity to even have an interview; they're rejected even before they get to the interview process.

Those are the things that employment equity will change, and we've heard the stories. Individuals who have called up for an interview, having seen an advertisement—"Oh, yes, you have wonderful qualifications"—get to the door: "Oh, I'm sorry, the job has been already taken." That's because of either the colour of the skin or because of the disability or their gender. Those are not the types of things we want to see in Ontario.

We want to see a real, true, fair and equitable process in place in which, if people are qualified, if they have the experience, if they meet the requirements of the job, they are at least interviewed and given that opportunity to compete on a level playing field. That's really what employment equity is: It's levelling the playing field, making everybody have that equal opportunity and, once in the workplace, afford equal opportunity to proceed through promotion and have the training afforded them. Those are very, very important fundamentals of this bill.

**Mr Derek Fletcher (Guelph):** Thank you for being here this afternoon. I was just going over some of the things that Mr Curling said. He said that as far as employment equity is concerned, we should assist to identify and then help remove barriers. Bill 79 is doing that, isn't it?

**Hon Ms Ziemba:** Yes, it is.

**Mr Fletcher:** I thought so, yes. Then enforcement laws, also: There are enforcement laws in Bill 79?

*Interjection.*

**Mr Fletcher:** I was just wondering if Mr Curling was reading the same thing I was reading.

When I listened to the Conservatives—I remember when I was going through my history books and reading about slave owners way back when saying: "We don't have to change anything. Some people like their lot in life." When I got that, I thought, "That's a strange way of thinking, that if we don't do anything, things will evolve." How long do we wait until things evolve? Is there really a need for legislation? Is this a push to help the evolution?

**Hon Ms Ziemba:** There is a need for the legislation. Although we have employers who've done a wonderful job and have certainly tried to implement employment equity, even if we are going to give those employers an equal opportunity for competitiveness that we should be affording them, we must make sure that everybody has an equal opportunity and that other employers practise employment equity practices.

But we can't wait for everybody to catch up. If we wait, then in Ontario we are wasting those valuable human resources that we have at our disposal, that we

can use to put our province ahead in the marketplace. That's what employment equity's about as well. It's not just about fairness—which is important; I think the justice and equity part of employment equity is extremely important—but as we look on these very challenging times that Ontario faces, we also have to make sure that our province is positioned to be able to compete fairly around the world. If we have the best-talented people in our workplaces, that will make sure that this province is positioned in the global marketplace, that we can trade, that we can have the people with the knowledge and the experience who will give those workplaces that competitive edge.

That's what Ontario really is all about. It's about people coming from many different places, sharing in one common goal, and that's to live side by side in a harmonious way but at the same time to make this the best place to live in. I think employment equity is part of that whole agenda and I think it's very imperative for us to move on it, to make sure that Ontario can compete.

**Mr Fletcher:** Are you twisting anyone's arm as far as trying to get employment equity is concerned? From everything I'm listening to from the opposition, you're twisting the arms of the business community, of labour, of everyone. It seems like you're twisting arms. Through the consultation, was there a twisting of arms or was there a cooperative approach to actual employment equity?

**Hon Ms Ziemba:** The process we went through was very interesting for me. We sat down at a table with people who had varied interests, who came from very different perspectives, and of course the one thing they had in common was that they shared a love of Ontario, but they really did have different agendas. I think we came out of that process with people sharing ideas and we saw people change some of their viewpoints and mellowing a bit and modifying their aspirations so that they could bring forward the best possible bill that would work and would be effective.

The consultations across Ontario, not just in my advisory group, again I think was a new process of bringing people together in a different way so that we could share a common objective. That has been very important, something we've all learned from and that I hope we can build on in the future.

But yes, people came very cooperatively to this process and continue to do so. One of the very finest things I have enjoyed through all of this is that even people we have not gone to have come forward to say they would like to lend their support. For instance, the vice-president of the Royal Bank has offered his support; it's not somebody we had sought out, but he offered us his support in making sure that this bill went forward because he believes in it very strongly. We welcome that type of cooperation and that type of

wanting to help us. If we can all work together, that's extremely important.

**Mr Fletcher:** I know my colleague has some questions.

**The Chair:** Ms Harrington, one last question.

**Ms Margaret H. Harrington (Niagara Falls):** You've said that this bill is very important and fundamental, and I certainly agree with your statement that it is both a social justice and an economic issue for this province. I also did hear the Liberal and Conservative opposition state something similar. I know Mrs Witmer said it is going to have a profound and lasting impact on the province, and Mr Curling said he does certainly believe in employment equity.

Because this bill is undoubtedly so important, I believe this committee should be able to travel, to consult directly with the people across Ontario, especially those people in the north. The disabled people of course will have more difficulty in travelling.

I want to tell you, Madam Minister, that the attitude of the opposition parties in subcommittee was this: They outrageously insisted that this committee would not travel. When every other committee sitting at this time is travelling, they voted against travelling. They voted against having four weeks; they wanted it in three weeks. That is their attitude.

**Mr Curling:** I changed it now; I want to travel.

**Ms Harrington:** Once again, the system is working against aboriginal people, the majority of whom live in the north. The system is working against the disabled people, who obviously have much more difficulty travelling, whether it is by plane or by car.

That is the way they treat this. I want to ask you your opinion on why travelling is important.

**Hon Ms Ziemba:** I thank you for your comments and sharing with me, because obviously I was not at the subcommittee and so would not have heard the dialogue and the interchange. As we talk about employment equity, about fairness and being open and accessible to the workplace, at the same time we're denying people the access to an open process, which does surprise me. Of all bills, that we would deny people that opportunity to be able to come to the hearings seems quite ironic. As I heard your comments and heard subsequently about what the opposition members were saying, it does really make me wonder. Also, the fact that first we wanted the four weeks and they wanted three, and now they want four—it's rather confusing.

I think we have to really be very clear about this. If we are to have a democratic process, this is a very large province and people should have access to a committee. They should have access to the whole process. Travelling was very important to me. I wanted to hear from the people in Thunder Bay, which I'm going to do, because I do intend to make sure that I, at least, have

the opportunity to be afforded the information that might not be able to get to this committee.

**The Chair:** Minister, I want to thank you for your presentation and thank you for your participation with this committee.

**Hon Ms Ziemba:** Thank you and good luck.

**The Chair:** I'd like to propose a five-minute pause, and then we'll begin at 3:50.

*The committee recessed from 1543 to 1555.*

**The Chair:** I'd like to reconvene the committee. I'd like to welcome the Deputy Minister of Citizenship, Naomi Alboim. Naomi, you might introduce the person with you.

**Ms Naomi Alboim:** Sitting with me is Katherine Hewson, who is with the group within the ministry that has responsibility for working on both the regulations and legislation.

**The Chair:** Naomi, you have approximately one hour. You don't have to take the whole hour if you don't want to, but we have up to one hour.

**Ms Alboim:** Okay. What I thought I would do is do a run through the act itself, in some cases really just putting into lay language what is in the act and in other cases going into a little bit more background, a little bit more detail, particularly in those areas where there may be some need for clarification or a need for amplification, given some of the misconceptions that we have heard exist about some of the areas. I'll do that as quickly as I can but there is a lot to go through.

First of all, in terms of the preamble, there's already been discussion about the preamble here today, but I just wanted to indicate that it does set out the context for the Employment Equity Act and does refer to the fact of higher rates of unemployment faced by aboriginal people, people with disabilities, members of racial minorities and women; the fact that more employment discrimination is faced by those groups of people than by others in our society; the fact that there is underrepresentation, particularly in senior management positions, for these groups and overrepresentation of these groups in low-paying positions where there is little chance of advancement; a recognition that this lack of employment equity exists both in the public and the private sectors and that this lack of employment equity is at least partially based upon systemic and intentional employment policies and practices which together have a discriminatory impact.

If I could take a moment just to differentiate between "systemic" and "intentional," systemic policies and practices are usually long-standing, apparently neutral practices which result in the disproportionate exclusion of certain groups from the workplace. Such practices could include, for example, inappropriate skill or qualification requirements which are not linked to the true requirements of a job, inflexible work arrangements



and work hours, selective recruitment practices, inappropriate assessment or interviewing techniques, and perhaps the creation of a workplace atmosphere which fails to recognize the needs and characteristics of different groups. Those are the kinds of things that we would refer to as systemic policies and practices that have the effect of discrimination.

The other kind of practices would be those that intentionally lack neutral characteristics. Those are ones that directly intend to restrict or limit access to employment opportunities by certain groups. These could include, for example, the characterization of certain jobs as either male jobs or female jobs, the refusal to hire particular groups of people because of particular stereotypes that may exist or the refusal to make a workplace or a particular job accessible to a person with disabilities.

Since Ontario's Human Rights Code was enacted, the people of Ontario have recognized the rights of all citizens to fair and equal treatment in all aspects of society, obviously including employment. The Employment Standards Act and the Pay Equity Act have extended this principle of equality in employment. The purpose of this particular act is to build upon these other acts. The aim of employment equity is to extend further the principles of fair and equal treatment and access to employment opportunities throughout Ontario and to ameliorate the long-standing employment conditions that have been faced by aboriginal people, persons with disabilities, members of racial minorities and women.

Subsection 1(1) just reaffirms the principle of equal treatment in employment that is set out in the Human Rights Code. I won't go into detail on the rest of section 1. I think it's fairly self-explanatory.

Paragraph 1 of section 2 deals with the employment equity principles. This paragraph entitles every aboriginal person, every person with a disability, every member of a racial minority and every woman to be considered for employment, to be hired, treated and promoted free of any barriers.

Paragraph 2 of section 2 deals with the issue of representative workforces. This subsection requires all workplaces to reflect the designated group population of their community in all occupational categories and at all levels of employment. This is clearly a long-term goal. This is not a goal that is expected to be achieved in a single employment equity plan term, for example. It's based upon the assumption that when special measures are put in place and barriers are eliminated, the workplace will eventually be representative of the population of the surrounding community at all levels of employment.

Paragraph 3 deals with the requirement of employers to ensure that their employment policies and practices related to recruitment, employment and promotion do

not discriminate either directly or indirectly against the four designated groups.

Paragraph 4 introduces the notion of positive measures and that section requires every employer to implement positive measures for the recruitment, employment and promotion of the designated groups. Positive measures are policies and practices designed specifically to benefit members of a particular group. They are usually time-limited. Special accommodation measures for persons with disabilities, training programs for female managers or recruitment practices aimed at a specific designated group could be examples of positive measures.

Going on to part II of the act, which is really the interpretation section of the act, there's a listing of definitions there. I will not go through all of them, but there are a few that I think may be worth highlighting.

The first one is "bargaining agent," and I think what's important to recognize here is that the bargaining rights referred to in this subsection are rights already established by any act—for example, the Labour Relations Act and the Crown Employees Collective Bargaining Act.

The "broader public sector" refers to those employers who are identified in the schedule. The schedule that will be used for this act is the schedule that was used for the Pay Equity Act and most recently used for the Social Contract Act. The "broader public sector" does not include the Ontario public service.

In terms of the definitions for "employee" and "employer," an employee for the purposes of this act is defined as a person who's determined to be an employee in accordance with the common law. The common law traditionally looks at a fourfold test to determine the existence of an employment relationship, and those four aspects of the test are control, ownership of tools, chance of profit and risk of loss. There has been some discussion about that in our consultations. Similarly with "employer," that fourfold test is what is referred to here.

I don't think there's need to go through the other definitions. Perhaps I could turn now to subsection 3(2) and the Ontario public service. Subsections 3(2) and 3(3) differentiate between what would be considered part of the Ontario public service and what would not be, and the differentiation is whether the employees are appointed under the Public Service Act. So those who are appointed under the Public Service Act would be considered part of the OPS; those not, would not be. This subsection would prevent the province from being found to be the employer for employment equity purposes for anyone working for a crown agency, board or commission who was not a civil servant, a public servant or a crown employee under the Public Service Act.

Subsection 3(4) deals with existing employers and the number of employees, given that, as you know, the obligations of the act depend on the size of the employer. This makes it clear as to when an employer has reached a particular size so that certain obligations kick in. What is important in this section I think to identify is that the number of employees of an employer is the sum of all the employees of the employer throughout Ontario and the number is not specific to a particular workplace or geographic location. The act then goes on to set out the different obligations.

Section 4 just deals with who the designated groups are.

Subsection 5(1) I think is important to really spend some time on. This is in fact how the Employment Equity Act relates to the Human Rights Code provisions. Given some of the discussion earlier today and in the public domain about reverse discrimination etc, I think it might be useful to talk about this in some detail.

Subsection 5(1) affirms the special employment provisions of the Ontario Human Rights Code that are contained in sections 11(17) and sections 24(1)(a) or (b). These sections prevent an employer from being found in violation of the act when the employer conducts legitimate hiring practices established by the Ontario Human Rights Code.

This subsection does not exempt any employers from the requirements of the act. It simply allows employers to follow legitimate special employment practices when fulfilling their employment equity obligations. For example, a women's shelter can continue to employ only women, but it must ensure that it meets its employment equity obligations with respect to racial minority women, aboriginal women and women with disabilities.

Section 11 of the Ontario Human Rights Code concerns constructive discrimination. This subsection indicates that requirements, qualifications or factors which have an adverse impact are discriminatory except where these requirements, qualifications or factors are reasonable and bona fide, or where the code indicates that to discriminate because of such ground is not an infringement of a right.

Section 11 of the code states that a requirement qualification or factor cannot be considered reasonable and bona fide unless the needs of the group of which the person is a member cannot be accommodated without undue hardship on the part of the person responsible for accommodating those needs.

Section 17 of the code concerns handicaps. This subsection states that a person with a handicap who is not capable of doing the essential duties or requirements to exercise a right is not being discriminated against. However, a person with a handicap cannot be considered incapable of doing essential duties or require-

ments unless that person cannot be accommodated without undue hardship on the part of the person responsible for accommodating those needs.

Clause 24(1)(a) of the code concerns special employment. This subsection enables certain types of organizations to employ primarily or exclusively persons identified by particular characteristics; for example, race, sex or handicap. This subsection of the code requires that the qualification required by an employer be a reasonable and bona fide qualification because of the nature of employment.

Clause 24(1)(b) of the code also concerns special employment. This subsection states that it is not discriminatory in employment to consider age, sex, record of offences or marital status of an applicant. These characteristics must be reasonable and bona fide qualifications because of the nature of the employment.

What this section allows for is the Employment Equity Act to refer specifically to those provisions in the Human Rights Code that allow for special employment practice. So there is absolute coincidence between the employment act and the Ontario Human Rights Code in this regard.

Section 5(2): This subsection deems existing seniority rights with respect to a layoff or recall to employment after a layoff not to be barriers for the purpose of employment equity. These seniority rights deemed not to be barriers to employment equity must have been acquired through a collective agreement or an established practice of the employer. Other seniority rights, such as those dealing with hiring, training, promotions, transfers, shifts and benefits are not affected by this subsection.

If we can now go on to section 6 and the application, subsections 6(2) and 6(3) recognize that employers change the size of their staff and that employers' obligations change accordingly. The remaining sections of this particular section just deal with when there are changes, what kicks in at what point in time. It also recognizes that small employers do not have the same obligations in the act as large employers. For example, those under 10 in the broader public sector and those under 50 in the private sector do not have the same obligations. When those organizations reach those numbers, they do have those obligations.

Police forces are not covered by the Employment Equity Act, given that they are subject to a separate employment equity process established by section 48 of the Police Services Act, and section 7 just reaffirms the obligations of the crown.

#### 1610

Part III is the obligations section.

Subsection 8(1) states that every employer must implement and maintain employment equity by recruiting, employing and promoting employees according to



both the employment equity principles in the act and in accordance with the employer's employment equity plan. Subsections (2) and (3) deal with the obligations of employers to ensure that their supervisors and managers understand their obligations and observe those obligations. Subsection (3) deals with the obligations of those asserting those responsibilities of being aware of and acting in accordance with the act.

Subsection 9(1) deals with the collection of workforce information, otherwise known as workforce surveys. This requires every employer to gather information about current designated group representation in the employer's workforce. The purpose of such a survey would be to provide employers with a snapshot of their workforce, to allow employers to determine the extent of underrepresentation of designated group members in their workforce, to assist employers in the setting of numerical goals and qualitative measures and to provide employers with a means of seeing how well their employment equity plan achieved better representation of designated groups. There is a draft reg, as you know, that covers specifically the manner in which this information is to be gathered.

Subsection 9(2) is a section that grants employees the right to refuse to answer questions and makes answering questions voluntary. This subsection clearly supports the principle of self-identification which is reflected later in subsection 17(2).

Section 10 deals with review of employment policies, otherwise known as employment systems review, and this section requires every employer to review the employer's employment policies and practices, and the manner and content of that review is described in the draft regulation that was released about a month ago.

Section 11 deals with the employment equity plan itself. It requires every employer to prepare an employment equity plan in accordance with the regulations, and the draft reg does in fact outline what is required in this regard. The plan prepared by each employer has to cover all employees employed by the employer throughout Ontario, although in the draft reg it provides quite a lot of flexibility in terms of subcomponents or chapters of a plan to allow for different parts of an employer's workforce. It must contain, however, a section on elimination of barriers, on positive measures, on implementation of accommodation measures, goals and timetables for the qualitative measures I just mentioned above, goals and timetables for workforce composition, otherwise known as numerical goals and timetables, and potentially for other matters.

Subsection 11(2) deals with the plan certificate. This requires every employer to file a certificate with the Employment Equity Commission rather than filing the actual plan to the commission. The content of that certificate is also described in the draft reg that was circulated. A copy of the plan is only required to be

filed at the request of the commission. It is not mandatory otherwise.

Section 12, the implementation of the plan: This sets the standard for implementation of the plan, and the standard is that every employer must "make all reasonable efforts to implement the employer's employment equity plan and to achieve the goals set out in the plan in accordance with the timetables set out in the plan." That standard recognizes that this bill is all about proactive planning, that this bill is all about addressing systemic discrimination, and it recognizes the need for flexibility from workplace to workplace, given that the circumstances will be very different and require different kinds of both measures and time frames for the implementation of those measures.

Section 13 deals with the review and the revision of the plan, which indicates that a review and revision is necessary in accordance with the regulation. The draft regulations require that revision every three years. Plan certificate is necessary. It's necessary to file a certificate every time the plan is revised, which again is every three years. There is no requirement to file a plan unless the Employment Equity Commission requires it.

Section 14 deals with joint responsibilities of the employer and bargaining agents and obviously applies only to unionized workplaces. This section recognizes the really important role a bargaining agent can play in gaining acceptance and understanding of the principles of employment equity, as well as the link that will exist between an employment equity plan and the provisions of an existing collective agreement.

In subsection 14(1), business and labour are treated as partners in the development of the employment equity process.

Subsection 14(2) articulates more which specific areas require joint responsibility, and that is the development of the workforce survey, the review of the employer's employment policies and practices, the preparation of the employment equity plan and the review and revision of the employment equity plan.

The joint responsibilities apply only to that part of the employer's workforce which is represented by the bargaining agent. The employer retains sole responsibility for all employment equity obligations related to non-union employees. However, there are consultation requirements for those employers with non-union employees. Also, there are, further on, consultation requirements in terms of designated group members that are covered in the regulations.

Subsection 14(3) deals with those workplaces where there is more than one bargaining agent, and this subsection sets out the process which must be followed where that is the case. This subsection allows for efforts to be as effective and efficient as possible by requiring the employer and each of the bargaining agents to

establish a committee to coordinate their joint responsibilities.

This committee, as indicated in the draft regulation, will enable the workplace parties to collectively determine the manner in which their joint responsibilities will be carried out. The committee, according to the act, is made up of one representative each of the bargaining agents and one representative from the employer. In the draft reg, that was changed to allow for equal numbers of employer reps and bargaining agent reps. It's expected that an amendment will be necessary to bring that in sync.

Subsection 14(4) emphasizes the need for employers and bargaining agents to carry out their joint responsibilities in good faith and, it says specifically, separate from the collective bargaining process. That, again, is to confirm the parties' obligation to approach employment equity as a partnership process.

Subsection 14(5) raises those situations where there might be a conflict between the employment equity plan and terms of the existing collective agreement. This subsection sets out how those conflicts should be dealt with, by requiring an amendment to the collective agreement to resolve any conflict between the two. The intent of this particular subsection is to indicate the paramountcy of the employment equity plan in the workplace once the parties have agreed to that employment equity plan.

Subsection 14(6) deals with the right to information. The act states that the bargaining agent must be provided with that information which is necessary to enable the bargaining agent to carry out its joint responsibilities. Those areas of responsibility deal with the workforce survey, the review of the employment policies and practices, the preparation of the plan and the revision of the plan. That availability of information is necessary to allow the bargaining agent to fulfil the joint responsibilities that it has.

Section 15 deals with consultation with employees. This section requires employers to consult with their employees during the development, implementation, review and revision of the employment equity plan. It's in the areas of workforce survey, review of the employment policies and practices and the preparation, implementation, review and revision of the plan.

The need for that consultation recognizes the importance of the participation of employees in these processes and will also help the employer address the concerns and interests of both designated groups and non-designated groups within the workplace, thereby increasing understanding and acceptance of the principles of employment equity. There is in the draft reg, again, regulations that prescribe the manner in which that consultation should take place.

Section 16 deals with the posting requirements that

will be set out in regulations and again the draft reg covers that. It's also the employer's obligation to ensure that that information is accessible in the workplace.

#### 1620

Section 17 deals with employment equity records. This is where the emphasis is placed on self-identification in subsection 17(2), which states that the employment equity records respecting membership in the particular designated groups must contain only that information which has been voluntarily given by the employee. This subsection prohibits an employer from maintaining records with respect to designated group membership which have been prepared without the consent of the employees in question.

This is an area that is of tremendous concern to designated group members, who want to make sure that they are the ones who control what is in their records about their membership or not in those designated groups.

Section 18 deals with reports to the commission, and this allows for regulations to prescribe the manner, content and timing of any reports. As you will know from the draft reg, reports are not required on an automatic basis; reports are only required when requested by the commission. Otherwise, it is certificates only that will be filed with the commission.

Section 19 deals with exemptions, and subsection 19(1) deals with a regulation to define an aboriginal workplace. We have not been successful in concluding the consultations as of yet with the aboriginal communities about this. There is therefore no draft reg yet available, and we will be consulting this fall with the aboriginal community about the development of that particular regulation.

Subsection 19(2) deals with the possibility of either exemptions or modified requirements, in this case for some of the smaller broader public sector employers. This allows for those between 10 and 50 employees to have modified requirements. The draft reg does propose modified requirements both for this category as well as for 19(4), which deals with the private sector employers between the sizes of 49 and 100.

The modified requirements that are in the draft reg relate to no numerical goals being required, modified employment systems being carried out, and modified information required on the certificates that are submitted. Again, the act allows for, should the size of organization change, that it then have additional obligations imposed upon it and that a modified requirement ceases to exist if that organization grows.

On to section 20 and the implementation: This just lays out the timing to comply for existing employers, and ranges from the OPS, which is required to comply with its first employment equity plan 12 months after the effective date, up to small private sector employers



from 50 to 99 employees having 36 months from the effective date to have concluded their workforce survey, their employment systems review and the development of their first employment equity plan.

New employers are covered both in the broader public sector and the private sector as to when their obligations kick in after they come into existence, and section 21, both subsections (1) and (2), deals with what happens when they reach certain levels or sizes.

Part IV deals with the enforcement of the act.

Section 22 gives the Employment Equity Commission authority to conduct audits. It can conduct those audits to determine whether or not an employer is complying with the act. Those audits can be conducted at any time that the commission determines to be appropriate within certain parameters that are outlined in subsection 22(2). There must be a reasonable time. They must enter a place only at a reasonable time. They can inspect relevant documents, they can remove and copy relevant documents and they can question individuals.

Those powers are like any other employment law. They are identical to the ones in the Pay Equity Act and in the Employment Standards Act. They are not more onerous or less onerous than other employment law states. They must show identification, they must have the consent of the owner and they must have a search warrant. There are a number of provisos here that are the same as in other employment law.

On to subsection 23(1): This provides the commission with the authority or the ability to effect a settlement with any employer that the commission believes is not in compliance with part III of the act, and any settlement must be in writing.

Subsection 24(1) provides the commission with the authority to order compliance without a hearing. It can make an order against an employer if the commission considers that the employer has not conducted a workforce survey in accordance with the act or has not conducted a review of the employment policies and practices in accordance with the act, if the plan itself does not comply with the act, if the employer fails to make the required filings of certificates, fails to consult with employees, fails to maintain appropriate records or fails to submit required reports.

The powers of the tribunal are listed in part in subsection 24(4), and that means that the tribunal has the jurisdiction to review orders of the commission. On appeal, they can vary, rescind or confirm any order of the commission.

Subsection 24(5) states that if there is no appeal, the orders of the commission are deemed to be orders of the tribunal. That allows for the orders of the commission to be enforced as if they were orders of the tribunal without the necessity of a hearing before the tribunal.

Subsection 25(1) allows the Employment Equity

Commission to apply to the tribunal for determination, and that may be made when it's not readily apparent or readily ascertainable whether or not an employer has complied with the act.

Subsection 25(2) deals with deemed non-compliance. If the commission shows to the tribunal that the employers failed to take any steps required by the plan or that the employers failed to achieve the goals set out in the plan in accordance with the timetables, the employers have the burden of proof that their plan does comply with the act or that they have made all reasonable efforts to implement their plan and achieve their goals. That burden is on the balance of probabilities.

Subsection 26(1) deals with the grounds upon which any person other than the commission can apply to the tribunal, and those grounds are if an employer fails to take any steps required by the plan, if an employer fails to achieve the goals set out in the plan in accordance with the timetable or if an employer fails to implement a settlement with the commission. The defence there of the employer is that the plan does comply or that the employer has made all reasonable efforts to achieve the goals.

Subsection 27(1) deals with those instances where either an employer or a bargaining agent applies to a tribunal if the parties are unable to fulfil their joint responsibilities. This, given that it's flexible in terms of when they can apply, will prevent the parties from having to wait until their time for compliance has expired before resolving any conflict between them. They can go early on in the process to get some assistance in this regard.

There is a mandatory obligation, though, for an employer to notify the tribunal if the employer and bargaining agent have not completed within the time required. The entitlement, however, does allow the bargaining agent to do that as well, even if the employer has failed to do so.

Subsection 27(4) allows the tribunal's authority to make an order it considers just in any application brought by the employer or the bargaining agent. However, it must be emphasized that this is limited to that part of the employer's workforce which is represented by the bargaining agent.

#### 1630

Subsection 28(1) gives employees the right to apply to the tribunal. An employee can apply to the tribunal if he or she feels that the employer and bargaining agent have failed to carry out their joint responsibilities in good faith or if the employer fails to apply to the tribunal under subsection 27(2).

Again, the tribunal may make any order it considers just in any applications brought by an employee, which could include the removal or modification of the terms in an employment equity plan which the tribunal thinks

was not concluded in good faith.

Subsection 29(1) deals with the prohibition of intimidation, coercion, discrimination or penalty against any person exercising a right under the act and gives the tribunal the jurisdiction to hear those applications. That was put in specifically to encourage employees to exercise their rights under the act without fear of any reprisal and to deter employers or any other parties from interfering in the exercise of a right under the act. The tribunal in these cases does have the authority to order, potentially, compensation, rehiring, rescinding any penalty, or preventing a future contravention in those cases where there has been intimidation, coercion, discrimination or penalty.

Section 30 deals with notice to the commission by the tribunal if in fact something has been brought forward to the tribunal, and the obligation, complementarily, of the commission to advise the tribunal if it is in the process of auditing an employer. This will allow for no duplication. It prevents simultaneous proceeding against a single employer both of the commission and of the tribunal, and requires the two organizations to keep each other up to date and communicate with each other about the status of particular cases. The results of any audit filed by the commission must be filed as evidence at any hearing held by the tribunal so it has the benefit of that information.

Section 31 deals with mediation. That requires all applications to the tribunal to be referred to an employee of the tribunal who may attempt to settle the matter. It also says that if there is any kind of settlement, that has to be in writing. If, on the other hand, an application is not settled by mediation or if an employee of the tribunal thinks that mediation will not be successful or cannot result in a settlement, the tribunal will hold a hearing.

Section 32 deals with the parties to an action before a tribunal, and that is the interested employer, the interested bargaining agent and any other person specified by the tribunal. The Employment Equity Commission can apply to be a party to any application.

Subsection 33(1) deals with the power to make orders. The tribunal can make an order to establish an employment equity plan, to amend an employment equity plan, to require an employer to create an employment equity fund, and to appoint an administrator responsible for developing, implementing, reviewing or revising an employment equity plan at the employer's expense.

"Reconsideration" allows for the tribunal to reconsider, vary or revoke any of the decisions or orders.

Subsection 34(1) gives to the tribunal exclusive jurisdiction to determine the matters before it, including all questions of law and fact. It also states that the decisions of the tribunal are final and binding, and that

would restrict the circumstances under which a decision or order of the tribunal can be judicially reviewed.

Section 35 deals with offences, particularly in terms of confidentiality of information, to begin with. No one can use or disclose information collected from employees except for the purpose of complying with the act, both in terms of obligations and enforcement. It also makes it an offence to wrongfully disclose such information. Similarly, people cannot hinder, obstruct or interfere with an employee of the commission while they are in the course of an audit. They can, however, refuse to produce documents unless a warrant has been obtained, if that's required. There is an offence for people who are guilty of contravening the obstruction clause, and that is a fine of up to \$50,000.

Section 37 deals with intimidation again. These clauses confirm the right of all persons to be free from intimidation, coercion, penalty or discrimination for exercising a right under the act, for participating in proceedings under the act, for disclosing information required by the act or complying with or seeking enforcement of the act or an order. That can be enforced by application to the tribunal and it makes it an offence.

Section 38 just deals with that offence, subject to a fine of up to \$50,000.

Section 39 just deals with the requirement that the tribunal consent to any prosecution.

Part V deals with the establishment of the Employment Equity Commission and just goes through the Lieutenant Governor in Council appointment of the commissioner and leaves it up to the LGIC for composition as well. Employees will be appointed under the Public Service Act.

The functions of the commission are listed in subsection 41(1): to further the principles of employment equity; to monitor employment equity in the act; to develop policy on employment equity; to assist stakeholders in complying with the act; to review existing seniority systems; to educate the public about employment equity; and to carry out functions assigned by this or any other act.

You'll see here that much of the focus is on facilitative, educative support to the implementors of employment equity as well as the monitoring of employment equity.

It allows for the commission to conduct public consultation; to assist in the monitoring and development of assistance to the implementors.

It allows for the development of policy directives under subsection 42(1), and those policy directives will assist the tribunal in dealing with matters brought before it.

It requires the tribunal to consider the commission policy directives.

It allows the commission to establish its own rules.



It requires an annual report to be submitted by the commission to the Minister of Citizenship to be tabled in the House.

It allows for the establishment of advisory councils to advise the minister, the ministry, the Employment Equity Commission in terms of the commission's mandate and to act as a link between the commission and communities, and states very specifically that the minimum representation on those advisory councils must be from the major stakeholders, from business, labour and the designated groups. Those advisory councils could be provincial or regional.

The Employment Equity Tribunal is established as a result of section 46—again, some description about the role of the LGIC in designating chairs and designating composition, vice-chairs.

Employees, again, would be named under the Public Service Act.

It allows for the establishment of panels of the tribunal for presiding officers.

I'm just going through this fairly quickly.

In terms of part VI, this deals with government contractors and the area of contract compliance. This establishes a contract compliance provision for all crown contracts. All contracts with the crown or an agency of the crown are deemed to contain a condition requiring the party to the contract to comply with its obligations under the act.

One thing that I think needs to be clarified is that this section applies only to those parties who already have obligations under the act. For example, those that are governed by the federal legislation, because they are within the federal domain, or those that don't have obligations under this act, are not covered by the contract compliance program.

Government grants are considered similarly in terms of the contract compliance program.

I'll go now to the regulations, subsection 50(1), just to identify to you those that the draft regulation now covers.

Number 1, the membership in a designated group, is in the draft reg; 2 is not because we have the schedule; 3 is not; 4 is not; 5 requires additional consultation with the construction industry and there is not a draft reg at this point in time for 5; 6 is in the draft reg.

I'm assuming you're following so I don't have to tell you what they—

**Mr Murphy:** Can I ask you just to start—

**Ms Alboim:** Sure. Number 1, the membership in designated groups, is in the draft reg; 2, about employers in the broader public sector, is not because it's a schedule—in fact, it is because we're using the schedule, but there's no change to that; 3 is not in the draft reg; 4 is not in the draft reg; 5, we are undertaking

some further consultations with the construction industry and there is no draft reg right now for number 5.

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Number 6 is in the draft reg; that's the workforce survey. Number 7, the employment systems review, is in the draft reg. Number 8 is in the draft reg; that's the employment equity plan. Number 9 is in the draft reg.

Number 10 is in the draft reg; number 11 is not at this point. Number 12 is in the draft reg and number 13 is in the draft reg. Number 14 is in the draft reg. Number 15 is in the draft reg; number 16 is not; number 17 is not.

"Numerical goals," which is a separate section in this section—that's subsection 2—is in the draft reg. That's the numerical goals.

Section 50, subsection 2 provides for the authority for regulations to be drafted and there are draft regs on that.

**Mr Curling:** Is that 52 you're talking—

**Ms Alboim:** Section 50, subsection 2.

**Mr Curling:** Numerical goals.

**Ms Alboim:** Numerical goals are in the draft regs now, yes.

Part VI of the bill deals with consequential amendments and this, again, is I think a pretty—

**Mr David Winninger (London South):** It's VII.

**Ms Alboim:** I'm sorry, my eyes have started to go cross-eyed.

Part VII deals with consequential amendments and I think this, again, is something that is probably important to go through in some detail.

Section 14 of the Human Rights Code permits special programs designed to relieve hardship or economic disadvantage, or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity, or that are likely to contribute to the elimination of discrimination prohibited by the Human Rights Code.

Subsection 51(1) amends section 14 of the Human Rights Code to deem employment equity plans prepared under the act to be special programs for the purposes of section 14 if the requirements of subsection 51(1) are met.

In order to be deemed to be a special program, an employment equity plan must be found to be in compliance with part III of the act by the Employment Equity Tribunal or the Employment Equity Commission.

Subsection 33(1) and section 34 of the Human Rights Code set out the circumstances under which the Human Rights Commission may decide not to deal with the complaint before it.

Subsection 51(2) is a consequential amendment to the Human Rights Code which results from the addition of the amendment to subsection 33(1) of the Human Rights Code set out in subsection 51(3). This amendment will

prevent the Human Rights Commission from dealing with certain matters which involve practices which are addressed in an employment equity plan if the criteria set out in subsection 51(3) are met.

In 51(3), if I can go through that with you: This subsection deals with the potential jurisdictional overlap between the Human Rights Code and the Employment Equity Act.

Section 34.1 is added to the Human Rights Code to set out the procedure which must be followed by the Human Rights Commission and the Employment Equity Commission when dealing with a human rights complaint arising from a practice addressed in an employment equity plan.

All complaints brought before the Human Rights Commission with respect to a matter that is addressed in an employment equity plan must be referred to the Employment Equity Commission.

The Human Rights Commission will determine whether the matter brought before it is in fact addressed in the employment equity plan.

When a matter is referred to the Employment Equity Commission, the commission must satisfy itself of four things: (1) the complaint arises from a practice that is addressed in the employer's employment equity plan, (2) the employment equity plan complies with part III of the act, (3) the employment equity plan addresses the practice in a reasonable manner over a reasonable period of time, and (4) the employer is making all reasonable efforts to implement the employment equity plan and to achieve the goals set out in the plan in accordance with the timetables in the plan.

Once the Employment Equity Commission is satisfied that these factors have been met, it must direct that no further action be taken on the matter. If no such direction is made, the matter is referred back to the Human Rights Commission for resolution.

This section was put in specifically to coordinate the enforcement measures of the Human Rights Code and the Employment Equity Act by ensuring that actions did not arise under both statutes at the same time. It ensures that cases relating to the employment equity plans are assessed in the context of employment equity and it provides for the orderly implementation of employment equity plans. Given that this act deals with a proactive, systemic kind of orientation to deal in a planned way with the removal of discriminatory barriers, it allows for individual instances to be assessed within the parameters of that planned proactive addressing of systemic discrimination. It does not take away from the right of an individual to go through the entire process of the Ontario Human Rights Commission for a situation or a circumstance that does not relate specifically to something that is in the plan that is more systemic in nature.

If an individual is discriminated against in an inter-

view situation, for example, where they have been asked questions that are totally inappropriate and they want to take that through the Human Rights Code, they can go all the way forward in the Human Rights Commission because there is nothing in the employment equity plan that would allow for questions of that kind to be asked within an interview situation.

If it was something that dealt with a more systemic kind of situation like the availability of training programs, for example, that might be something that is planned by the employer to be undertaken but there is an orderly kind of implementation of that plan. According to this section, the individual instance would have to be weighed and looked at in terms of the reasonableness of the employment equity plan.

Section 52 just requires a review within five years of the implementation of the act and that the review be conducted by a standing or select committee of the Legislative Assembly and provides that committee with one year to conduct its review.

Section 53 just deals with when the act comes into force and 54 is the short title.

**The Chair:** Thank you, Ms Alboim, for the technical information that you've provided us. We'll begin with the official opposition with questions of Ms Alboim.

**Mr Murphy:** I have a couple. First off, I'm wondering whether you would view an addition to the preamble saying something like "that the merit principle continues to be applied," no matter how that's worded—I mean, it could be worded as something that's clear that this act is intended not to lower standards but to remove discriminatory barriers, be they systemic or intentional—whether you think an addition like that to the preamble would in any way impair the operation of the bill as intended.

**Ms Alboim:** I guess it would depend very much on the wording that was proposed. I think there is no intent in this bill anywhere to require employers to hire unqualified people, and if it's a matter of just stating that in the preamble, that would certainly not detract from the intent of the bill.

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**Mr Murphy:** Let me give you a specific wording, just that it be amended to include a statement, something to the effect that "the purpose of this act is not to reduce standards but to eliminate discriminatory barriers." Would that in any way—can you see—impact on the bill? Sorry, I don't know the person sitting next to you. I assume that's a legal adviser of some sort next to you. I'm sorry; I don't know your name.

**Ms Katherine Hewson:** Katherine Hewson. I would probably not want to comment on particular wording at this point in time.

**Mr Murphy:** A couple of other things: Under the



definition of "employee" and "employer," usually, in most acts, you'll find the definition of "employer" and "employee" tend to be fairly reflective of each other, for obvious reasons. What I don't understand is why the definitions are different in the sense that "employer" seems to be broader to some degree than "employee." For example, "employer" includes anybody who regularly engages the services of others on a fee-for-service basis, but that's not a definition included in the definition of "employee." If you don't have an immediate answer, you can tell me later.

**Ms Hewson:** I think it would be inclusive. "Employer" and "employee" nevertheless have to be read together in the act and therefore, because an employee is an individual who is primarily working for an employer on a commission basis, the definition of "employer" would I think have to be read to include an employer of such a person.

**Mr Murphy:** Absolutely, which is why it makes sense, the commission, but you've added in the definition of "employer" the words "fee-for-service," which aren't in the "employee" section.

**Ms Hewson:** Okay.

**Mr Murphy:** To follow up as well, I see you've made this applicable to trustees and receivers, I assume receivers and managers. Am I to understand therefore that if a trustee in bankruptcy is appointed, of a company, this act applies to a trustee of a bankrupt company who would then have to spend the money to go through to implement an employment equity plan?

**Ms Hewson:** I believe that is correct.

**Mr Murphy:** Now, for the purposes of the definition of "employees" in terms of when you're adding up for your survey purposes, I assume then that would include all employees regardless of how long they've worked for you. I know that you have term and seasonal employee defined in the regulation, but it seems to apply only to the definitions related to what information you have to file with the commission, not to the actual content of your plan.

I'm wondering whether that was an intentional difference or an unintentional one in terms of the definition of "employee," because as I read it here you basically have to count up anyone who's an employee no matter how short- or long-term, seasonal or otherwise. It could be that youth after school, for example, on a part-time, non-permanent basis would have to be counted, but they seem to be excluded in the regulation definition in terms of what information you have to file with the commission later, and I'm not sure I follow why that's the case.

**Ms Hewson:** You've made reference to the seasonal employee. I think you also you would want to make reference to the term "employee" in the draft regulations, which is defined as an employee who works for

an employer for less than three months.

**Mr Murphy:** No, I understand that, but the definition is in 47 of the regulations. That definition under 47(5) only refers to sections 45 and 46, which are merely the reports that are to be filed. It just strikes me that you've got a definition of "employee" that's narrower for the reports than it is for the plan, if you see what I mean.

**Ms Hewson:** I see what you mean. I think that is unintentional.

**Mr Murphy:** Okay. You can assist me on a definition. If I'm right the way this works, a racial minority is defined essentially in two ways: a visible minority and then a self-identified visible minority. You need to fulfil both components.

**Ms Hewson:** Yes.

**Mr Murphy:** So that if I am a non-visible racial minority, this doesn't cover me?

**Ms Hewson:** An employee—

**Mr Murphy:** I don't know. Would the Italian community—I don't know if that's a race—or Filipino?

**Ms Alboim:** The basis of the act is on self-identification within the definitions given, so the expectation is that the definitions would be provided in the survey material, education would be provided to employees about the definitions, and then it is up to the individual to read those definitions and self-identify on the basis of those definitions.

**Mr Murphy:** No, I understand that. What you're saying, for example—it seems to me to be a two-part: They both have to be a visible minority and identify themselves as a visible minority. Now, I might be wrong, but that was my impression in reading it.

**Ms Alboim:** The basis is self-identification and the basis is within the definition given. The definition defines a racial minority as someone who is in a visible minority. Therefore, that definition would be used by individuals to make their own determination as to whether they are a racial minority within that definition or not.

**Mr Curling:** Let me just follow this up, then. You're saying that there's a guideline to show you if you're a visible minority. If you fall within that, then you can tick the little box and say, "Yes, I am a visible minority, according to the criteria set down." If they see nothing in those and consider themselves a visible minority—this is what my colleague is asking—they can't tick it then, because they're not within that defined group that you have laid down, or category?

**Ms Alboim:** Not exactly, because in the regulation we don't have a listing, for example, of all the subgroup possibilities. It's not as if someone has to see "Indo-Pakistani" to check off "Indo-Pakistani." The issue is, do they identify themselves within that definition, which

is a broad definition, as a racial minority or not?

**Mr Murphy:** Can I follow up or are you—

**Mr Curling:** Once more, if my colleague here decided in his heart that he's black—

*Interjection.*

**Mr Curling:** This is an important question, Could you, in that—

**Mr Tilson:** He wouldn't use the word "black," would say "visible minority."

**Mr Curling:** Well, I'm just saying "black," and he says it comes under "visible minority," being black. He'll tick that, then.

**Ms Alboim:** The basis of the act is self-identification. If individuals, reading the definition and having understood the educational material, determine that because of their ancestry or because of their self-identification, they do belong to one of the designated groups, that is what they indicate.

**Mr Murphy:** Conversely, obviously, someone who is a member, but refuses to self-identify for whatever reason, is not, then, included in the calculation of workforce membership for the purposes of the survey.

**Ms Alboim:** Yes, that is correct. I think it's important to amplify this answer somewhat. First of all, the designated group members themselves find self-identification to be absolutely an essential part of this process. I don't want to focus on one group more than another, but particularly people with disabilities find it quite offensive that someone other than themselves would have the opportunity to identify whether they are a person with a disability or not for the purposes of employment equity. Similarly, people from the aboriginal community: Some of them want to be known as members of the aboriginal populations and others do not and have expressed real concern about having a third party identify on their behalf whether they belong or do not belong to a particular designated group.

One of the things that I think is important in the regulation, and certainly work that is going on with the Employment Equity Commissioner's office at this point in time, is to develop public education materials and to develop supports for employers and for trade unions and for community organizations to make people aware of how important it is to self-identify and to come forward and of the benefits of self-identification, and to indicate to people the importance of self-identifying accurately. I think the combination of the concerns of the designated group community and the need and provision for public education material is behind this very strong dependence, if you like, on self-identification.

1700

**Mr Curling:** I just want to follow up on that debate. Inside the workplace, the person is identified accordingly. Outside and in the geographic area, you have to be consistent in order to realize it's reflecting the commun-

ity. If an individual inside who has made his own self-identification is outside a self-identification process—do you follow me? In other words, here in the workplace you're asking for self-identification, and you want it to reflect the community outside. Is the community outside a self-identification?

**Ms Alboim:** Yes.

**Mr Curling:** So to that extent, as we go—

**Ms Alboim:** I don't know how many of you fill out census forms, but I think it's a law that we all fill out census forms, and that's the basis for the statistical information that exists on what the composition of our population is and what the composition in any community is. Census data, all Statscan data, is based on self-identification. You don't have people coming in and saying, "You are a racial minority." You are given a form and you are asked to self-identify what part of the world you came from or whether you are or are not part of a particular group. Census data that have served us reasonably well over the numbers of years Statscan has existed are all based on self-identification information, and that will be the benchmark that is used. Census data are the benchmark that is used. So yes, it's self-identification both inside and outside.

**Mr Murphy:** I'd like to focus a bit on section 11 in a couple of ways. One is the accommodation provisions, clause 11(1)(c), the positive measures, and the positive measures concept in clause 11(1)(b). One of the things I was involved in in private practice was a human rights complaint from a female worker in an employment setting that involved a lot of shift work. She was a parent. Her complaint was in essence that that shift work caused her basically to be unable to be promoted because she was assigned certain duties because she needed to be home at certain hours because of day care.

One of my questions is, is it your view that this would cover that situation or a similar situation where a day care availability issue, because of being a female parent, would in essence have an unequal impact, as the argument goes, because of shift work problems in the workforce?

**Ms Alboim:** There are positive measures and supportive measures. Positive measures are those that are particularly put in place to assist particular designated groups. Supportive measures are those measures that would be put in place to assist all workers in a workplace that might also help designated group members.

Something in that regard, like a more flexible approach to scheduling shifts, more flexible working hours, alternative working arrangements, for example, could be a supportive measure that would benefit everybody in the workplace, but would also allow designated group members to take advantage of this particular opportunity to allow for things like child care



provisions to be put in place. We would see alternative work arrangements or flex time or those kinds of things as an employment equity measure that benefits all workers in the workplace.

**Mr Murphy:** The flip side being, obviously, from at least an employer's perspective, what measures employers fail to take would count as being in breach of the act for the purposes of either the commission or the tribunal if they end up being different, in policy as opposed to personnel. The point being, in other words, if something like 30% of the females in the workforce are parents as well—I think something like that, if I remember the 1991 census data—the question then is, can it be a legitimate complaint, for example, that the failure of an employer to assist in providing day care is failure to provide a positive measure or an accommodation?

**Ms Alboim:** To actually provide day care?

**Mr Murphy:** Yes.

**Ms Alboim:** Okay. Let me backtrack a little bit. What would be required in a workplace is for the employer, either in joint responsibility with the bargaining agent or in consultation with non-union employees, to undertake an employment systems review to look at all the employment policies and practices that exist in the workplace and to determine whether any of those policies and practices have an adverse impact on particular designated groups or create barriers that prevent full participation of the designated groups.

If it is determined that a particular workplace practice does cause a barrier or does have an adverse impact, and that is identified as part of the employment systems review, the legislation would require a measure to be put into place, in terms of a plan to address that, that makes sense for that particular workplace in a way that is possible and practical and reasonable over a time period that is practical and workable for that particular workplace so that there is a relationship between what barrier exists and what measure might be appropriate.

I can think of a lot of measures that might be more practical, workable, affordable, reasonable than requiring an employer to establish an on-site day care to respond to a particular barrier that has been identified in the employment systems review.

**Mr Murphy:** And that's fair, but under this bill that decision you've just made—you can think of ones that would be less costly—that decision, though, is the commission's and then the tribunal's?

**Ms Alboim:** No, the decision is for the workplace parties to determine what is a reasonable plan to put into place that includes measures that have goals and timetables associated with them to respond to them.

**Mr Murphy:** But the commission has to certify that the plan—

**Ms Alboim:** No.

**Mr Murphy:** Well, it does for the purposes of the Human Rights Code complaint procedure in section 53.

**Ms Alboim:** Okay. If there is a human rights complaint lodged, then a particular process kicks in. Absent a human rights complaint—

**Mr Murphy:** Or a complaint by any person to the commission about the plan?

**Ms Alboim:** That's right, but the reasonableness provision is the one—

**Mr Murphy:** Oh, granted, absolutely. It's subject to a reasonableness test, but the Human Rights Commission is now taking the complaint about the magazines in the corner stores. It's really then up to the commission, at least in the cases it wants to take, the interpretation of reasonableness.

**Ms Alboim:** Again, if I could just backtrack for a moment, the intent of the whole bill is to allow for the workplace parties to identify barriers, to come up with solutions to those barriers and to develop a plan that makes sense for that particular workplace.

**Mr Murphy:** I agree. I'm not arguing about the intent of the bill. I suppose I'm doing the lawyer's task of saying, "All right, let's follow it through and see what happens." The reality is that I came from a workplace environment where the issue of maternity leave and its impact upon promotion in a law firm environment was a very big issue, and how you resolve that, what you do and how you accommodate that issue in terms of stepping up the grid was a very real issue. The question is, what are the proposals to deal with that problem? Then it comes into the reasonableness of those measures, and that's a question to be interpreted by the commission. I'm trying to get a handle on how far that can be stretched, given our experience with the Human Rights Commission. Even Alan Borovoy is quoted today as saying he thinks the commission is going too far in a few places.

I'm not debating the intent of the bill or objecting to the intent; I'm just trying to work through how far it, as drafted, can go.

**Ms Alboim:** Ultimately, if something goes to the Employment Equity Commission or to the tribunal as a result of concerns lodged, yes, it would be up to the tribunal to determine whether something was a reasonable response or not.

**The Chair:** Mr Murphy, one final question.

**Mr Murphy:** Oh, my goodness; I'm barely through this.

One question I do have relates to the collection of information in terms of the—what is it—the census agglomeration area, or whatever those Statscan terms are?

**Ms Alboim:** Census metropolitan areas, yes, correct.

**Mr Murphy:** Just one sort of initial question and

then the follow-up: As I understand it, the way it works the definition of "racial minority" would mean that an employer would look at the collection of all visible minority groups together as one category?

**Ms Alboim:** In theory.

1710

**Mr Murphy:** In theory, right. So it would be a black, Chinese, Vietnamese, whatever is identified. Do the census data break down in a way that makes this workable so that you can provide an employer with, I assume—is Metropolitan Toronto one of the—so you could say that there are 3 million people in Metropolitan Toronto and 267,310 are visible minority groups in this sense? You're nodding; that means yes.

**Ms Alboim:** Yes. The Statscan data are available and will get better as a result of the most recent census—that is, more accurate than the old census was in this part because of the refinement of the questions.

**Mr Murphy:** And is that broken down by occupational group in the same way that this breaks down occupational groups?

**Ms Alboim:** Yes. Whatever we have put in here is absolutely complementary with the data that exist through Statscan so people will not be using one set of data and another set of data that don't—

**Mr Murphy:** I wonder if I can ask what information you have from Statscan, for my case, Metropolitan Toronto, but that breakdown. Can you supply us, as the committee, with that information? Would that be possible?

**Ms Alboim:** With—

**Mr Murphy:** The Statscan breakdown—

**Ms Alboim:** By designated group?

**Mr Murphy:** Yes, by designated group according to occupational group.

**Ms Alboim:** By occupational group, no, and for the following reason: We are transferring over from what was SOC to NOC; SOC was standard occupational code and NOC is national occupational code. Statscan is making the transition. We are basing this on the new information, which is the national occupational code, so that employers will not have to do a transfer over and will have available the data that Statscan is now going to be providing that data in. So it is not yet available in NOC. It will be available by the time the legislation is—

**Mr Murphy:** Is the old data available under the SOC?

**Ms Alboim:** The SOC data should be available.

**Mr Murphy:** Could I at least have that?

**Ms Alboim:** Sure.

**Mr Murphy:** Thank you.

**Mrs Witmer:** One of the concerns that's been expressed by many of the individuals and groups

concerning employment equity is the fact that the bill is silent on many of the key issues and much of the content, the real meat, is contained within the regulations. There's some concern that some changes to the regulations could be made through the back door, by cabinet, and not by full discussion by the people in the province of Ontario.

I guess one of the areas of concern is the area of numerical goals. As I indicated earlier, there's a concern about quotas. Whether or not the minister agrees, there is the perception that there will be quotas, that quotas will be imposed by the government on the employer community.

The draft regulations, in some ways, have attempted to clarify that situation, but I guess I'm wondering if there has been any serious consideration given to taking a look at the regulations—it's in sections 23, 24 and 25—and taking those sections that refer to numerical goals from the regulations and putting them into the bill while at the same time removing subsection 50(2) from the bill, because if you take a look at that subsection, it does allow the imposition of quotas by the commission.

**Ms Alboim:** First of all, I'm not sure that subsection 50(2) allows for the imposition of quotas. It talks about percentages, not quotas, and there are some—

**Mrs Witmer:** Percentages and quotas, there's not a lot of difference.

**Ms Alboim:** There is a difference even in subsection 50(2) in what you're referring to, but I won't get into that.

There has been discussion in a number of quarters from a number of stakeholders about the relative merit of moving some of the things from regs into the legislation or not. The government is aware of the concerns of the number of different groups on some of those aspects and whether they should be moved into legislation or not.

Several things, if I could just—no decision has been made, obviously, on that. I think the government is interested to hear through the committee hearings more about that. I think that although the committee hearings are really to talk more about the legislation than regulations, I would expect that some of the presenters will address some of their comments to the draft regulations as well, and that will be helpful for the government to hear. The consultation process on the regulations is happening simultaneously but has a deadline date of the end of October for comments on the regulations, so I think the government would like to hear more about the regulations and concerns people have or suggestions they have before making any definitive decision.

**Mrs Witmer:** Yes, and I guess that is another one of the reasons why I strongly believe the clause-by-clause analysis of the bill should be postponed, because the time line for the discussion around



the regulations is still ongoing, and I hear you say that there might be some willingness on the part of the government to consider shifting some of the regulations to the bill.

**Ms Alboim:** Again, this is not really a technical question. This is more a question that could be addressed to my minister or to members of the committee rather than to me.

**Mrs Witmer:** That's right, but I know many of the presenters are going to be certainly raising those issues.

**Mr Tilson:** The last few did.

**Mrs Witmer:** What about the issue of confidentiality? It's included here, and there's a lot of concern that the confidentiality of the individual, and also the overall business, is not adequately protected. Are there any suggestions as to how that might be strengthened?

**Ms Alboim:** Again, in the draft reg there is special provision made for if in—

**Mrs Witmer:** In 14, where—

**Ms Alboim:** If there are any cases where there are numbers under five that it be rolled up so that people are not easily identifiable. If they are the only aboriginal lathe operator in a particular organization, it wouldn't say "one" in that particular report, so that people's self-identification again could be protected and retained confidentially. That's in the draft reg at this point in time.

There are provisions in the act now that make it an offence to release any information about individuals. There could be—well, I think it's fairly clear now, and it is not only not allowable but it is an offence with up to a \$50,000 fine if personal information is released, and only that information that is necessary to share with the bargaining agent for joint responsibility is information that is made available to them. It's not as if everything is on the table.

**Mrs Witmer:** Who deems it to be necessary?

**Ms Alboim:** There is a reg-making authority in the legislation to actually prescribe what information is provided to the bargaining agent for them to take part in the exercise. There is no draft reg right now. That is something that we are again expecting to hear through the consultation process, whether we should actually identify each element of information that would be made available or whether that should be developed over time as a result of some experience rather than putting it into a draft reg right now. In the absence of the draft reg that prescribes that, it would be up to the parties to sit down and discuss what information is necessary—

**Mrs Witmer:** However, there might not be agreement on what is necessary.

**Ms Alboim:** And if there is no agreement, then the provision is to go to the tribunal to seek a ruling as to

what information is required.

**Mrs Witmer:** And it's exactly that type of issue that does create some uncertainty. At a time when we're experiencing a lot of hardship in this province, this bill comes along and further is worrisome to people, whether it's employees or employers, because there's another reason for people to get into some sort of divisive nature, and that's really unfortunate.

I hope the government will seriously give some consideration to the protection of confidentiality, because I think it's going to be very important. I think it's going to be one of the areas where people will refuse to self-identify simply because they have conditions, perhaps disabilities, that they don't wish others to be aware of. I don't think that at the present time they feel adequately protected by the legislation, so that's certainly a reason for concern.

1720

**Mr Tilson:** Whether you're a firm of 50 to 100 or of 100 to 500, I believe it is, the bill says those firms must do a number of things: They must survey their work, they must review their practices, they must prepare an employment equity plan, they've got to file a certificate—I'm obviously oversimplifying, but they've got to do a whole slew of things, some within three years and some within two years, depending on how big they are. Do you have any reports of any sort indicating what the government estimates it will cost firms of this size to do all of these things?

**Ms Alboim:** There are some reports that have been done about other initiatives. Until we know exactly what is going to be required by the legislation and regulations after the committee process, we don't have the specific costs, because it will vary from employer to employer, depending on what the circumstances are in that particular work site, what human resources they have already, what practices—

**Mr Tilson:** What if they don't have any? I guess that's the problem. If we're trying to debate individual sections or individual policies or developments, surely you, as the deputy, must be able to give us some estimate on something with respect to what it's going to cost these various firms. I just oversimplified a whole group of things that have to be done. What sort of paper work is that going to require? What sort of bodies will that require? There's a whole slew of questions that need to be asked and answered, I believe, before this bill can be passed, or before this committee can report back to the House. I can't believe that the government, and your office specifically as the deputy, doesn't have some reports that you have commissioned giving estimates about costs, whether it's a small business or a large business, or whether it's different types of businesses. You must have some reports.

**Ms Alboim:** Let me state it a different way. There

are some estimates based on the federal program; there are some estimates based on voluntary programs. It's very hard to generalize from those experiences into this particular exercise. More importantly, the expectation is that the supports that will be provided by the Employment Equity Commissioner's office in terms of manuals, guidelines, software packages, for example, for human resource practitioners, those kinds of things, will very significantly reduce the costs of administration to an individual employer.

**Mr Tilson:** To say that you must have some facts—I mean, I assume you've looked at other jurisdictions that have similar legislation, or is this the first ever? It can't be the first ever.

**Ms Alboim:** The federal government has an Employment Equity Act that is very limited in its application. They have a contractors' program which is a little bit more extensive than their legislated program. There is no other jurisdiction within Canada that has a comparable initiative to the one we have here.

**Mr Tilson:** What about North America, the United States?

**Ms Alboim:** The United States has a very different approach, and the costing in the States would not be comparable to what we are proposing here.

**Mr Tilson:** Can you give the members of this committee whatever you have? Obviously, all of those things that I summarized that are going to have to be done within two years or within three years is a substantial amount of work that these firms are going to have to do or they can be fined up to \$50,000, I think the bill says. To do that, you must have some background facts, and I believe this committee should see those background facts before we proceed. Are you able to give this committee that information?

**Ms Alboim:** We will have to go back to the office and see what is available and provide you with the best we can.

**Mr Tilson:** When can you provide us with that information, whatever you have?

**Interjection:** In the morning.

**Mr Tilson:** Tomorrow. It's right on the corner of your desk?

**Ms Alboim:** Well, it's probably not tomorrow, but we will do it as expeditiously as we can.

**Mr Tilson:** We've got a certain period of time; I just hope we'll have it.

I have a further question. My understanding of the law is that you can't use race, colour, ancestry, in decisions with respect to hiring or promotion; that's the law. An employer today, under the current law, must concern itself, therefore, with one question: Is the candidate the most qualified or suitable person for the position? That's the current law. My question to you is,

why is that existing law inadequate?

**Ms Alboim:** It's not the current law. The current law under the Human Rights Code allows for special programs to be put into place specifically to redress disadvantage, and it is allowable now within the jurisdiction of the Ontario Human Rights Code to develop particular initiatives that allow for questions of race, for example, to in fact be paramount in decisions taken. That is what the current law is.

What employment equity does is build on those provisions for special programs within the Ontario Human Rights Code and allow for a systemic approach to be undertaken to redress past discrimination. So it is not all right to ask someone if they are a racial minority if you plan to use that information against them. It is fine to ask someone if they are a racial minority if you plan to use that information to redress discrimination. That is what the current law under the Human Rights Code says.

**Mr Tilson:** It's been said over and over that in the current law we already have—I say “we”—the people of Ontario already have a substantial amount of rights to preclude discrimination. What you're saying is that they don't and that this law is going to preclude discrimination.

**Ms Alboim:** No. The Ontario Human Rights Code by and large deals with individual complaints and individual circumstances. What the Employment Equity Act is really trying to do is deal with systemic discrimination and issues that pertain to groups of people and not just individuals. It goes further than the Human Rights Code, to redress disadvantage experienced by classes or groups of people rather than just allow for each individual to complain individually to get an individual remedy. That's the intent of this act.

**Mr Tilson:** All right. I don't agree with what you've just said, but you've done your job as the deputy and I will proceed to another question. The question that interests me—

**The Chair:** One final question.

**Mr Tilson:** My final question, according to the Chair, at least, has to do with the fact that there are obviously a number of jobs now that are predominantly performed by—we'll take women as an example, whether it be nurses or elementary school teachers. There is no provision in this legislation to assist the male gender as a group to get into that type of thing.

There is the other issue, of course, that there may be particular occupations which, whether a particular gender, a particular race or particular disabled people, they may not want to go there, yet the big government is saying, “Thou shalt have certain numbers of people in those businesses, because if you don't, you're going to get fined up to x dollars.”

I know I shouldn't phrase it that way, because it's a



political question and I don't mean it to be. But there is no question that there are certain jobs today which are predominantly performed by women—I'll take that as an example because I can't think of any others at the moment, but those are two I can think of—and there are certainly jobs in terms of which women may not want to be in those particular jobs. Yet as I understand these vague plans, and they are vague, they will insist that an employer perhaps make that a little more equal even though people may not want to make it equal.

1730

**Ms Alboim:** There are no requirements in the bill for employers to capture individuals and insist that they work in jobs they have no interest in working at. In terms of the numerical goals and timetables and the way they are established, every three years the employer and the bargaining agent, if it's a unionized workplace, will have to do several things: (1) look at the look at the level of underrepresentation in a particular occupational group of particular designated groups and (2) look at the availability of people with the necessary skills and qualifications to enter into those occupational groups—

**Mr Tilson:** If we had more time, I'd challenge you on that, because that's the whole problem with this bill.

**Ms Alboim:** —and if they do not have people who are available either inside their workplace or outside their workplace who have the qualifications and who are capable of doing those jobs, there is absolutely no obligation to hire them.

**Mr Tilson:** I can't agree with you, but, Mr Chairman, you've given me my last question, so thank you.

**The Chair:** Very well. Mr Fletcher.

**Mr Fletcher:** Just a couple of quick questions, and I'll try to make them simple: Does Bill 79 supersede, does it conflict with, does it wipe out the Ontario Human Rights Commission legislation at all? Are there big conflicts there?

**Ms Alboim:** No. There is one section in the act that does talk about what happens when a complaint goes both ways simultaneously and what the order or the processing should be. The Human Rights Code is the primary law of the land. The one place in this act that allows for a modification to that is that when there is an employment equity plan that is dealing with a particular issue in a proactive way, the Employment Equity Commission can make a ruling that that is being addressed in a reasonable way and that therefore the Human Rights Commission should not address itself to that particular issue; otherwise, there is absolute complementarity.

**Mr Fletcher:** I'm an employer, and for some reason someone's complaining to the commission, and the commission makes its ruling and then we go to the tribunal and the tribunal makes its ruling. If I disagree with that as an employer, do I have further recourse?

Suppose I get fined the \$50,000. Do I have further recourse? Do I have through go to the courts or can I go somewhere else?

**Ms Hewson:** The decision of the Employment Equity Tribunal is final, and it would only be in an area that would be subject to judicial review that an employer would, I would expect, have a well-founded case for overturning such a decision. I think the answer is that the commission could make an order, that the employer has every right to take that order to the tribunal, where there would be a full hearing of the issue, and after that it would be only if there were an error or an error of jurisdiction that that case would likely be successfully judicially reviewed.

**Ms Alboim:** But the tribunal can overturn an order of the commission, so the first level is the commission order. If the employer is dissatisfied with that, the employer can take it to the tribunal. The tribunal has a hearing, and it can then overturn the decision of the commission or support it or vary it.

**Mr Fletcher:** As far as the legislation is concerned, we're going to be hearing, over the course of the next couple of weeks, of certain cases. I believe there was one brought up about day care being supplied, and that that would be a barrier. We can always bring up an individual case that could be in the grey area somewhere.

I'm piggybacking on a question that came from across the floor. Would that mean I could, if I wanted to, go through the process of going to the commission and the tribunal to find out, if my case were of that gender, where it was just in that border area, as an employee?

**Ms Alboim:** As an employee or as an employer?

**Mr Fletcher:** As an employee.

**Ms Alboim:** As I went through the roles and responsibilities and the powers and the authorities of the commission, the commission is primarily a facilitative, educative, helpful kind of organization to provide the kind of support and assistance necessary to the parties involved as to how to implement employment equity and what would meet the criteria and what would not, providing guidelines, providing manuals and supports etc. Yes, either an employee or an employer could go to the commission and say, "We're not sure how to respond to this particular barrier. Do you have any suggestions about positive measures or supportive measures or things that might be helpful to respond that would meet the spirit of the law?" and to get some kind of assistance on that.

If there was a particular complaint or particular concern by an employee who feels the plan did not address the needs appropriately, the employee goes to the tribunal with that, rather than to the commission.

**Mr Fletcher:** Just piggybacking on the idea of men

not being included in the legislation and to say what my colleague Jenny said, I guess it's time maybe we did allow men to be in there so we could fight for the 49%, that women are getting—

**Ms Alboim:** First of all, racial minority men—

**Ms Carter:** No, I said 49% because that's how many there are in the population.

**Mr Fletcher:** Yes.

**Ms Alboim:** I think it's important to say that racial minority men, men with disabilities and aboriginal men are very much a part of this, and white men, I would argue, will benefit from good employment equity practices as well.

**Mr Fletcher:** That's one of the big fears right now. Do I have just a little more time?

**The Chair:** There is time until 6.

**Mr Fletcher:** You mean I've got till 6 o'clock?

That is one of the areas where I hear a lot of concern and it's one of the myths coming out of the legislation, that the white male population is going to suffer from this legislation. I'm still trying to find out where, why and how and I'm just wondering if—technically, is there anything in the legislation that is going to be damaging to white males?

**Ms Alboim:** There is nothing in the legislation that would create a situation where white men are dismissed, for example, from their current jobs. There is nothing to say that white men would not be eligible for training opportunities or promotional opportunities. There is nothing here that says any of that.

In fact, one could say that an employer who has a good employment equity environment will create opportunities for all employees within the workplace and all those seeking to work within the workplace because it means there are good human resources practices in place. Whether that is training, whether that is support measures, whether that is flex time—whatever it is—it's an organization that's responsive to the needs of employees and the current labour force.

**Mr Fletcher:** You touch on an interesting point when you talk about training and everything else. I remember when I was a trustee with the school board, we were trying to set up an English-in-the-workplace program through the school board with many industries, and when it first started to be set up, there was some opposition to it. The reason was that employees from different ethnic backgrounds who weren't familiar with the English language weren't receiving the amount of training that other people were receiving, because of the language barrier, safety—they couldn't read safety signs—and the feedback we started getting from some of the employers was, "Hey, this is a pretty good program, because it's helped us design our training programs for our people and we're glad to implement it."

I can see with employment equity, when the reporting of the stats is in as far as the makeup of the workforce is concerned, that it can go a long way in how an employer would develop a training strategy and it would also go right down the line through all the supervisors, their hiring practices and everything else. I can see the benefits of the employment equity legislation as far as that is concerned.

Was this part of the discussion that went on with business groups when the consultation was going on, as far as how this could help in the workplace with training and the promotion of people?

**Ms Alboim:** Yes. The experience of some of the federal contractors, for example, and the experience of those who have done employment equity on a voluntary basis, the ones with whom we have had discussions, indicates that it has really helped in terms of their human resources management, generally speaking, across the board. There are people who see it as just providing an environment that is a healthier environment in their workplace, providing for them to find people in the labour force they never knew existed before to become employees in their organization. The impact has generally been positive.

1740

**Mr Fletcher:** Another part in the legislation—I don't have it open to the page; I think it's in section 14—talks about the employee groups being together, getting together. Let me see if I can find it. Okay, yes, it's 14(5), "If the employer and a bargaining agent decide to do anything that conflicts with a collective agreement to which they are the parties, they shall amend the collective agreement to resolve the conflict." Under whose determination is it that the collective agreement is in conflict? Is it the committee? Is it the union people? Is it the management people?

**Ms Alboim:** There are two possibilities in this case. If the bargaining agent and the employer agree, in the development of their employment equity plan, that this is what they want to do and they agree that there is a conflict between that and an existing condition of their collective agreement, they then just go ahead and do the amendment necessary to the collective agreement to bring it in line with the employment equity plan.

If there is no agreement between the two parties that there is a conflict—they have agreed on the employment equity plan but they don't agree that this in fact is contradictory or conflicting with what is in the collective agreement—then they would go to the tribunal for a determination. But if they agree, it's self-managed and they deal with it on their own.

**The Chair:** Any other questions from the government? We still have some more time, so I'd like to ask the opposition members whether they'd like to ask some other questions. M. Murphy?



**Mr Murphy:** Merci bien; always glad to ask more questions. I have some questions related to the commission and the tribunal. One of them is, how is the membership—the employees of the commission—how are you going to determine who gets picked? Is that going to be within the power of whoever's appointed commissioner under the section appointing the commissioner? Does that sole person pick the rest or are the minister and your office going to pick the rest? Do you know how that's going to work?

**Ms Alboim:** For the actual employees?

**Mr Murphy:** Yes.

**Ms Alboim:** All that's determined in the legislation is that they are employees to be appointed under the Public Service Act. Under the Public Service Act, there are certain requirements in terms of how civil service appointments are made. Right now there are lots of rules in terms of how appointments are made, given the number of surplus employees we have within the civil service etc. So the provisions that exist for the hiring of civil servants would be in place.

**Mr Murphy:** I guess what I'm getting at is that the commissioners have a fair degree of initial power under the act, because they are the ones who are reviewing the plans to make sure they are going to be reasonably in compliance. They're the people who are supposed to do the educating, develop the policies, a whole range of things. I'm just wondering what kinds of qualifications are being looked at for these individuals.

**Ms Alboim:** I think it's premature now to talk about that. We already have some staff who have been working. Although the commission isn't yet established, we do have a commissioner and we do have staff in the office of the Employment Equity Commissioner who have been working very hard on the consultation process and the preparation for the implementation of the commission. So there is a nucleus of people who are already working on these initiatives, but we need to do this in a step-by-step kind of way.

**Mr Murphy:** I'm going to jump around a bit. We're up to section 42. The tribunal is empowered to consider commission policy directives in making decisions, and I'm wondering whether any legal opinions were obtained regarding the role of the commission in terms of both its—it has an initial review, almost quasi-adjudicative function at the first level. It has a sort of legislative function, almost, by virtue of its policy directives. It can be a party before the tribunal and hence would have a quasi-prosecutorial role. There's a real potential for conflict within the commission among its various roles. I'm wondering whether you had any legal opinions to look at how it was going to deal with that internal conflict as to its many roles.

**Ms Alboim:** If I can give you an example of the Pay Equity Commission, the Pay Equity Commission has a

variety of roles and they have organized themselves so there is a differentiation made between the compliance group and the educative kind of group. There is a differentiation, a separation of responsibilities, but it is within the overall mandate of the commission, and a similar kind of structure would be one way to respond to that.

Do we have a legal opinion? If that's your question, no, we do not have a legal opinion, but we have other examples of like commissions that have a variety of different roles and how they have dealt with this issue.

**Mr Murphy:** I can't remember the provision, but somewhere in here there's a provision that allows any person to make an application, I believe, to the tribunal to complain about a plan. I'm wondering why it was drafted as broadly as that, to make it any person as opposed to an aggrieved person in a trade union or the employer.

**Ms Alboim:** This was also to allow for the possibility of third parties to make their concerns known to the tribunal.

**Mr Murphy:** Okay. What kinds of third parties would that be?

**Ms Alboim:** It could be, for example, ARCH, let's say: the Advocacy Resource Centre for the Handicapped. They might be monitoring the implementation of employment equity and the impact on people with disabilities, and they may have some legitimate concerns that they want to take forward to the tribunal.

**Mr Murphy:** I've looked through and I haven't been able to find the power allocated to the tribunal to essentially—or the commission, in a sense. I'm thinking about the Human Rights Commission, where you go through the complaint and there's the initial process where the investigators can say, "Look, this is without merit. We won't bother appointing a tribunal." That is to a certain extent skipped here because a person can go directly to the tribunal by way of application.

I'm not sure I see a specific power allocated either to the commission or the tribunal, other than in the exceptional circumstance of that human rights to employment equity back to human rights hockey game, for the commission or the tribunal to say "No, we don't need to consider this," in a preemptory manner without a full hearing.

**Ms Hewson:** The commission, under section 22, has the power to conduct an audit, but there is no automatic right to have a complaint carried forward by the commission as there is, for example, under the Human Rights Code. I would say that for your first question regarding the commission, they very much have the power to decide what to go forward with and what not to go forward with, because they make the decision where they're going to expend the resources to audit.

In terms of your second question, or the same ques-

tion as applied to the tribunal, I think it is true there is no limitation on the right under section 26 to apply to the tribunal. However, the grounds upon which a person may apply to the tribunal are as limited by section 26.

**Ms Alboim:** And because it would be an individual taking something to a tribunal without having the commission have carriage for that and therefore the individual would have to pay the costs, the expectation is that there won't be very many frivolous complaints going before the tribunal, given the hearing time etc that would be involved.

**Mr Murphy:** I leave some time for my friend, Mr Tilson.

1750

**Mr Tilson:** Just following on that point, this bill creates the Employment Equity Commission and it creates the Employment Equity Tribunal. When this bill was first introduced in June 1992, the minister indicated that \$4 million was allocated for the commission in 1992-93. Now the 1993-94 estimates tell us that the budget for the Employment Equity Commission will be \$6 million. There has been some question in the business community about policies and procedures of employers would be better adjudicated by a body that's already doing that sort of thing right now, which is the Ontario Human Rights Commission.

My question to you is, realizing the cost, realizing the similarity in many respects—you've already made comments that there are some differences—realizing all that, why are we creating a new administrative agency, another adjudication body? Why can't the Ontario Human Rights Commission handle this sort of thing?

**Interjection:** Good question.

**Interjection:** Yes, excellent.

**Ms Alboim:** I'm not sure that's a technical question.

**Mr Tilson:** I'm sorry and, Mr Chairman, I quite agree there's a grey area between technical questions and political questions, but let's look at it, as to what these things are going to be doing, what the Employment Equity Commission is doing.

**The Chair:** Would the existing case load be an answer?

**Mr Tilson:** To me, they're doing essentially the same thing, and I think it's a reasonable question to ask you, as the deputy minister, for the rationale as to why we're now going to have another layer, another administrative agency and another adjudication body when the Ontario Human Rights Commission could do exactly the same thing.

**Ms Alboim:** The Ontario Human Rights Commission, as you know, has responsibility for areas of discrimination that go far beyond purely the area of employment, number one. Number two, they have responsibility primarily, although not exclusively, for individual complaints as opposed to the kind of

proactive planning approach that we are looking for with the Employment Equity Act.

The role of the Employment Equity Commission, particularly in terms of providing expert advice and support to assist the workplace parties in terms of the development of plans, measures that have to be put into place, would indicate that you need a particular focus on this kind of initiative, rather than for it to be part of a whole range of other areas.

It is a fairly special focus in labour market issues. It is a particular focus on systemic issues, rather than individual issues, and it is particular to these designated groups as well. Whether or not—I think that the fact of the matter is too just at the current time we have a Human Rights Commission that is addressing a series of very, very difficult issues and we have the need to get this up and going and running quickly and effectively.

**Mr Tilson:** I guess I understand that and so you know what my next question is going to be and that is, what will be the staffing of the Employment Equity Commission? How many people will be required?

**Ms Alboim:** There are still some models being developed in terms of whether the organization is a decentralized organization or a centralized organization, for example. Options are being proposed about the organizational structure of the commission and we do not have—

**Mr Tilson:** So you don't know.

**Ms Alboim:** —final approval at this point in time as to the structure and therefore the staffing requirements.

**Mr Tilson:** You don't have approval, but can you tell us what's—

**The Chair:** Mr Tilson, just to wrap up, I want to give Mr Fletcher an opportunity to ask a question as well, to come back to him. Please complete your question quickly.

**Mr Tilson:** I thought he was finished.

**The Chair:** But I give you an opportunity to ask a question, so please complete the thought, and we'll go back to Mr Fletcher for one final question.

**Mr Tilson:** Can you tell us what the ministry's recommendations are as to the size of the Employment Equity Commission?

**Ms Alboim:** The options are still being developed, and there is no ministerial recommendation at this point in time.

**Mr Fletcher:** It's a pleasure to be here again. On some of the things that you're saying, I want to dispel one of the myths that is going around here. When this legislation was being done, was being formulated, we went out around the province and consulted with a number of groups, and that's how the legislation came about. Some of the groups are saying yes, some are saying no; it's, I'd say, 50-50 how the groups are going.



When I listen to the Conservatives and the Liberals also say that they want more time for discussion on this, more time for clause-by-clause, they didn't want to go around the province, they didn't want to travel around the province to get everyone's view, and there was an editorial from Sudbury that commented on this committee not going to the north where people are going to be affected by it, and I feel very sorry that we're not going to the north where many people are going to be affected. I blame the opposition parties for that.

They also agreed that what we needed was three weeks of committee hearings and a week for clause-by-clause, and now they want to change that around, which is sad because that means we're going to take more time and more time. I hear Mr Tilson talk about when it was first introduced it cost \$3 million and now it's \$6 million. If we had done it then, it would have cost \$3 million, not \$6 million. The way you've held things up, that's why we're where we are today.

When you were going around the province and you were discussing with everyone, you met with aboriginals, with people with disabilities, with women and minority groups. At any time, did any one of these groups say, "We don't need this legislation; we're fine"? At any time did that come out? Even from the business community, did they ever come out and say, "We're doing fine; we don't need this"? Was that a response that ever came out?

**Mr Murphy:** Think about the answer first.

**Ms Alboim:** The designated groups which participated in the consultation process were clearly in favour of having legislation, and strong legislation—

**Mr Fletcher:** Perhaps even a little stronger than where we are now.

**Ms Alboim:** I think yes.

**Mr Fletcher:** I think yes also. That's very good. Thank you for being here.

**The Chair:** Ms Alboim, Ms Hewson, thank you for the briefing and thank you for your participation with this committee.

**Mr Curling:** Before you dismiss the deputy, I'm not going to ask you a question at all, Mr Chair, but you

see the sort of activity that happened here after her explanation. I think it was an excellent way you responded. I think we haven't really got deep into it. My partner here, my colleague, had to rein in a bit because there's more. My question, I'm wondering if it's possible to have the deputy back, because it is so important. As you know, as soon as we have a presentation here, the questions that we would like to ask will not be asked of those presenting. We would love to have the deputy going through some of the explanations like that.

**The Chair:** We have a staff member here; I suspect it will be the staff member who will be here throughout the hearings. Is that not correct, Madam Deputy?

**Ms Alboim:** We will have staff present throughout the whole.

**The Chair:** So there will be somebody here who will be listening to these questions and possibly participating in this.

**Mr Curling:** Understanding that, we know that 30 minutes or so will be given to presenters. We didn't want really to encroach upon their time in answering technical details.

*Interjections.*

**The Chair:** Please, please.

**Mr Curling:** It doesn't seem to me that—they're not interested at all. I thought the parliamentary assistant was himself asking some good questions. I thought he knew the answers before, being the parliamentary assistant, but I just wanted to consider the fact that we don't want to encroach upon the time of the presenters, if there is such designated time that could be given in order that we could have an in-depth briefing again and questions like this.

**The Chair:** If it's necessary, we can in subcommittee consider the questions you've raised, but otherwise we will have staff here that will be listening and participating when necessary if necessary.

Thank you for coming. We'll start punctually tomorrow at 10.

The committee adjourned at 1800.







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- \*Murphy, Tim (St George-St David L)
- \*Tilson, David (Dufferin-Peel PC)
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*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Mr Malkowski  
Fletcher, Derek (Guelph ND) for Mr Duignan  
Perruzza, Anthony (Downsview ND) for Mr Mills  
Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick  
Wiseman, Jim (Durham West/-Ouest ND) for Ms Akande

#### **Also taking part / Autres participants et participantes:**

Ministry of Citizenship:

Ziemba, Hon Elaine, minister  
Alboim, Naomi, deputy minister  
Hewson, Katherine, manager, employment equity legislation and regulations unit

**Clerk / Greffière:** Freedman, Lisa

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

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Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 17 August 1993

# Journal des débats (Hansard)

Mardi 17 août 1993

Standing committee on  
administration of justice

Comité permanent de  
l'administration de la justice

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 17 August 1993

The committee met at 1004 in room 151.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call this meeting to order.

**Mr Alvin Curling (Scarborough North):** May I ask if the minister will be here today and during the hearings?

**The Chair:** You asked me that yesterday and what I said was that a staff person would be here but I didn't think either the deputy or the minister would be here today, no.

**Mr Curling:** It's very unfortunate. I remember through Bill 51, rent review, as the minister I was there constantly. I hope the minister will be here for this important bill.

**Mr Jim Wiseman (Durham West):** Give me a break.

BUSINESS CONSORTIUM  
ON EMPLOYMENT EQUITY

**The Chair:** I want to welcome the members of the Business Consortium on Employment Equity here this morning. Perhaps, Mr Bishop, you, as the chair, might introduce the other members. You have a half-hour. You may decide how to use that time, and hopefully leave plenty of time for questions and answers.

**Mr Allan Bishop:** Thank you, Mr Chairman. We intend to make a presentation of about 10 minutes in length and then allow, obviously, the members of your committee to ask us questions as you see fit.

I would like to introduce the three other representatives from our consortium who are with me this morning. Maureen Geddes from Union Gas is on my right, Phillip Francis from Maclean Hunter is on my extreme right and Pat Mackie from K mart is on my left.

We certainly appreciate the opportunity to address the committee today on issues that we think are of critical importance. While we understand that these hearings are primarily oriented to the bill, it is impossible to ignore the draft regulations which contain so much of the substance of the government's direction in these matters. Therefore, we ask that you bear with us if we refer

occasionally to the proposed regulations that accompany Bill 79.

We have provided you with copies of our submission, and I hope you have those. Therefore, we will let the written document speak to the details. We would like this morning simply to spend a few minutes summarizing our key concerns and, as I've already indicated, my colleagues and I invite your questions.

Before we begin, however, I thought I'd like to give you a brief explanation on who and what we are. The consortium was established two years ago and represents a broad cross-section of businesses in this province. Our membership is diverse in terms of both geography and industry, and together we employ about 50,000 people in Ontario.

The consortium was established in August 1991, and its members share a common interest in the pursuit of equitable employment systems as a positive and proactive business strategy. The 10 members are Du Pont Canada Inc, K mart Canada Ltd, Maclean Hunter Ltd, Molson Breweries, National Grocers, Price Waterhouse, Scott's Hospitality Inc, Spar Aerospace Ltd, Union Gas Ltd and Westinghouse Canada Inc.

We recognize the changing demographics of Ontario and the impact these changes will have on both the composition of the workforce and the demands of the marketplace. We know that it is in our best interests to attract and retain the very best people regardless of race, gender, ethnic origin or disability. For these reasons, we view bias-free hiring, training and promotion as an economic imperative essential to increasing our productivity, improving our competitiveness and maximizing our workforce talent.

Certainly, some groups continue to be under-represented in the Ontario workforce, and these situations must be rectified. But to try and address past biases by enforcing a system of new biases based on quotas, preferential hiring policies and other so-called positive measures, surely this is a classic case of two wrongs not making a right.

We feel strongly, and therefore we caution government that passing a bill which permits reverse discrimination could result in backlash from white males and deep feelings of tokenism among those given preference, and this will only poison public opinion and undermine honest efforts which otherwise would have been supportive.

There is only one truly fair employment system; that is a system founded entirely on merit, in which the best person for the job always gets hired, trained or pro-

moted at every opportunity, 100% of the time. "Equity" means fairness, and you cannot be fair only to four designated groups. Regimes based on job entitlement are the antithesis of employment equity.

We urge, therefore, that merit be enshrined as the overriding principle of this legislation and that all sections providing for special treatment in the hiring and promotion of certain groups be eliminated. This would include removing section 5 of the bill, which now permits preferential hiring and deems that seniority rights are not barriers to employment equity, as well as scrapping subsection 50(2), which now leaves open a back door for government to impose quotas by order in council.

1010

We also ask that the right of employers to set their own goals and timetables, recognized in the draft regulations, be strengthened by moving these sections into the bill. These sections are 23, 24 and 25 in the regulations.

We did not address one additional concern that I'll refer to now before I pass the microphone over to Maureen, and that deals with the powers of the tribunal. We would like to see an appeal process beyond the tribunal and not have the tribunal as the court of last resort, so to speak. In that respect we would like to see the bill also amended.

I'd like to now turn over the microphone to Maureen Geddes. She will highlight some additional concerns that we have in respect to the legislation.

**Ms Maureen Geddes:** Another major concern of consortium members is the virtually unlimited right of access to information which the bill confers upon union representatives. This includes data on individuals, both union and non-union, as well as confidential business plans, financial documents and other records held by the employer.

We recommend restricting this access to ensure that individual as well as proprietary business data are not disclosed and limiting bargaining agents to information regarding only that part of the workforce which they represent.

We would like to draw the committee's attention to four other areas of the legislation which are deficient.

First, the bill and draft regulations require that one employment equity plan be prepared for each employer's entire workforce. We submit that this is impractical, given the diverse nature of many businesses today. Geographic location, workforce composition, economic outlook, degree of unionization and many other factors may vary significantly within a single company.

We ask that employers be permitted to determine the number of plans that are appropriate for their workforce, thereby giving them the flexibility to achieve meaningful goals and timetables.

Second, it should be specified that the Employment Equity Commission may require filing of a plan only if the employer failed to file a certificate. Subsections 11(3) and 13(3) should be amended so that the commission does not have carte blanche in this regard.

Third, the bill and the regulations differ in the composition of coordinating committees in multi-union situations, with management clearly being outnumbered under the provisions of the bill, while the regulations stipulate equal representation for both parties. We endorse subsection 32(3) of the regulations and ask that subsection 14(3) of the bill be amended accordingly.

Finally, we have grave concerns about the generality of section 26 of the bill. It leaves an employer open to vexatious or frivolous complaints by "any person," including competitors and conceivably even special-interest groups. We recommend that a provision be put in place that would allow the commission to refuse to proceed in such cases.

To conclude, we urge that Bill 79 and the draft regulations be simplified wherever possible and that administrative costs for businesses be kept to a minimum. Employment equity will work only if it is supported by business, and the last thing business needs right now is legislation which is time-consuming, complicated and costly.

Thank you for allowing us to present these points. We hope our comments have been helpful and we trust that your wisdom and good judgement will help shape employment equity and an Employment Equity Act that is fair for all of the people of Ontario. We look forward to your questions.

**The Chair:** Thank you. We'll begin with the official opposition. For the next round we'll go to the third party and then the government members. Okay?

**Mr Curling:** How much time do we have?

**The Chair:** We have approximately six and a half minutes per caucus.

**Mr Curling:** Let me just thank you very much for the business consortium coming before us. We have met before and you have put your points, and you have been consistent with the points that you had placed when you met me and now that you're before the committee.

I would also agree with you that the regulations should be an integral part of some of this discussion here, because when the bill was introduced we were not satisfied as to the wording that was stated there. It was then stated to us by the minister that the regulation would explain it all. Now that the regulation is out, we gather that we cannot discuss that. It's very, very unfortunate, Mr Chairman, and I want to make it be known to the committee that this is just not the way we should really be going and that we want to have very effective employment equity legislation.

Again, I want to say to you that merit should be



enshrined in the legislation. I believe in that. Do you believe—and let me ask you this question—that those groups that are designated in this legislation are being shut out from being employed because of how they are designated—in other words, who they are—being some of the visible minorities, women, aboriginal people and disabled? Do you feel these people are being denied jobs because of the characteristics which they have?

**Ms Geddes:** I don't think there's any question that the traditional hiring practices have excluded a number of the designated groups. We have a whole set of policies, practices and procedures around recruitment that were based on what we felt was the best person at the time.

Changes need to be incorporated to recognize that some of our traditional recruitment methods may not be reaching all of the members of designated groups and that we may not even be reaching them to make them aware that we have opportunities they might be fit for. We need to examine as employers how we decide what the skills and abilities are that are necessary to do a job. Those are the kinds of things that you need to examine to ensure that your hiring practices are fair. To the extent that that hasn't been done, certainly there would be issues in terms of attracting non-traditional candidates to roles.

**Mr Curling:** So you would agree with me if I had said to you that some discrimination has been practised, sometimes being systemic in nature, and that there needs to be a plan in which to have these people being employed, considering first that they all are credible and they have the merit with which to do the job. Because studies have shown that even with those credentials, they'll still be denied the job, so we must have an employment equity plan—call it whatever you want—in place to give them access to those jobs, taking away all this kind of discrimination, sometimes unknown to the employers who have been practising that. Would you agree with me on that?

**Ms Geddes:** I would agree that the most critical part of this legislation is the employment systems review and the education that goes around making the changes to hiring practices and training practices and promotion practices in organizations to ensure that any barriers have been identified and removed and to ensure that supportive measures are there where necessary.

**Mr Curling:** Just because of time, I give my colleague that. I know we have a short time.

**Mrs Elinor Caplan (Oriole):** Thanks very much. Based on the last thing that you said, I was thinking about some of the comments that you made about progressive employers. I've attended employment equity awards dinners and been very impressed by the fact that many progressive employers felt that employment equity practices and programs and education were good for business. The general impression that I've had from

business leaders with good employment practices is that they have embraced the goals of employment equity.

Within that context, this legislation I think is regressive. The comments that you've made about it being seen as intrusionary and turning the clock back from the practices that good employers are already practising—it's almost like it's poisoned the atmosphere where you had progressive, good employers leading the way, many of whom are on your list and are now saying this is really problematic for that.

You support the goals and the principles, you support employment equity legislation, yet you agree—and I said many of the things in the Legislature that you said in your brief. If you were giving advice to the government as far as this piece of legislation is concerned, what are the parts of it that you find most regressive as far as the intrusionary approach is concerned? If you were saying to them, "Don't do this; do that instead," would it be the educational components, the reporting components? What are the parts of it that you think are out of balance?

**Mr Bishop:** I'll try and respond to that. First of all, we've indicated in our presentation this morning, and indeed in the brief you have, that the merit concept in our minds should underlie this entire piece of legislation and should underlie all of our thinking in terms of the principles of employment equity. I would state that up front in response.

1020

Maureen just referred to the importance, and indeed in our view the overriding importance, of qualitative measures in terms of a proactive approach to employment equity in organizations. I don't think we can overemphasize the importance of that and indeed, to a similar extent, the de-emphasizing of numbers-gathering, administrative work that is necessary behind the whole effort that it takes to gather statistics. We're not saying that some analysis of numbers is not important. Indeed, to have a sense of where you are, you have to do some numbers-gathering. But that aspect of the legislation should be de-emphasized as much as possible, because we have to remember that in terms of resources, the business community, particularly right now, is short of resources, and the investment that is allocated to employment equity effort you don't want directed to administration and numbers-gathering. You want it directed to the qualitative efforts.

**Mrs Caplan:** The qualitative efforts that you see are the educational and the employment opportunities that could be available if resources were—

**Mr Bishop:** Yes, and the systems reviews, your hiring practices and promotion practices and so on.

**The Chair:** Thank you, Mr Bishop. We've run out of time. Mr Tilson and Ms Witmer.

**Mr David Tilson (Dufferin-Peel):** Yesterday I

pointed out to the deputy minister that when the bill was first introduced in June 1992, the minister indicated that it would cost \$4 million, which was being allocated for the Employment Equity Commission in 1992-93. The 1993-94 estimates indicate that the budget for the Employment Equity Commission will be \$6 million, and that's just for the Employment Equity Commission; it doesn't include all the other stuff that goes with it.

My question to the minister with respect to business, whom you represent, was that now anyone with over 50 employees, a staff of 50, is going to have to do a number of things, all of which we know and which I'll briefly summarize. They have to survey their workforces and collect data; they have to review their employment practices in accordance with the regulations; they have to prepare an employment equity plan; finally, they have to file a certificate. Oversimplification, but it's going to take, in my estimation, a lot of person-power and a lot of money for a business of over 50 people.

I asked the minister whether they had any data or any reports or any estimates from consultants as to what it would cost different businesses to do all this stuff. She didn't have a clue.

My question to you is whether you have sat down—and it may be difficult, because I appreciate it may change from company to company. But what is this going to cost an average company, if there is such a thing?

**Mr Phillip Francis:** Companies, larger companies particularly, already have human resources departments. These people are specifically trained in the areas of the bill, the discussion of the bill, such as developing the employment systems and so on and so forth within an organization to ensure the workforce is correctly trained and to position the company competitively. I think it's very difficult to answer your question, because the focus of these people will be in the employment systems review and training. Perhaps there will be more focus than otherwise would have been in existence if the bill had not been passed.

I think there will be many smaller companies, however, which do not have human resource people. Those companies, I think, will find it more difficult to go and hire somebody to fulfil the requirements of the bill. They'll either have to use consulting companies or, if the commission itself deemed it to be necessary, it may provide some consulting services to assist these companies. There's going to be a cost. There's going to be a changing of focus. Ultimately, if the bill provides companies to determine the best route for them in employment practices, then the costs should be minimized. But the actual dollar cost, I don't know the extent.

**Mr Tilson:** Mrs Witmer has some questions.

**Mrs Elizabeth Witmer (Waterloo North):** Yes, I'd

like to pursue the merit issue. I indicated yesterday, and certainly it's one of the key concerns that I have, that nowhere within this bill is there any mention of the fact that the employer preserves the right to hire the best individual for the job. I see that your number one concern here as well addresses that particular issue, the need to be cognizant of the principle of merit and fairness for all. In fact you mentioned that if that doesn't happen, we're going to be cursed with reverse discrimination and tokenism.

The bill is silent on the merit principle. It is silent on fairness for all. Could you explain a little further as to what needs to happen in order to ensure that there is the perception in the mind of the public, in the mind of employees and employers that indeed there will not be tokenism, there will not be reverse discrimination and that indeed individuals will be hired on the merit principle? What can the government do to ensure that that really is the case?

**Ms Pat Mackie:** I think, as we asked, the major thing that has to happen is that the merit principle would be enshrined right in the act so that that is a response to the criticism, to the concerns of organizations that are doing more with less, trying to produce quality products and give quality service, that it's imperative that they have the right person for the job. If we can say, "Yes, it is an employment equity act, but it clearly states that we still as management have the right to hire the best person for the job," then I think that alleviates a lot of the criticism and would give a lot more support to the act and to achievement of employment equity in Ontario.

**Mrs Witmer:** Is there anything the government could be doing? I know that this bill really gives most, if not all, of the responsibility to the business community as far as employment equity is concerned. We know there's underrepresentation, but what can we do? I guess what we need to do is we need to eliminate the barriers that are preventing some of these members from the designated groups from accessing, because we all know that once they overcome the barriers they have the same abilities as the rest of us. What could the government be doing to assist?

**Ms Mackie:** I think the biggest effort they can make is to help with the education process, the employment systems review. I understand there are going to be guidelines coming from the government in that regard, and I think that's very helpful, particularly for smaller businesses that don't have the resources or the expertise on hand to know how to really look at their systems and see if there is any systemic discrimination. I think some assistance in that regard to help organizations with documentation on how to do a systems review, but also then with some type of financial aid to educate the workforce—many companies, such as our own, have many geographical locations. We have a lot of training



to do in each one of our 80 stores in Ontario to make sure that everyone involved in hiring and promoting and dealing with people is right up on employment equity and is proactive in this regard.

**Mrs Witmer:** I would just—

**The Chair:** We ran out of time for that. You'll have another opportunity, hopefully.

We have four speakers on the government side, so just remember that, Mr Winninger.

**Mr David Winninger (London South):** I'd like to thank you for your presentation today. I know that some of your members have already made some strides in the area of employment equity, so I'd like to deal with this issue, which I think is really a myth, that merit is somehow being sacrificed on the altar of employment equity.

We all know that while the merit principle should apply when employing people, it hasn't always historically. Other considerations, such as cost, long-term planning, just to name a couple, have come into play.

It seems to me, however, that if the individual from the designated group has the most merit of all applicants, the question would be a moot one as to whether merit is being jeopardized. If, however, the person is not from one of the designated groups and has more merit, as you put it, than an individual from the designated group, quite clearly our legislation, Bill 79, allows an employer to hire the person with more merit. If you have two individuals, to keep the case simple, one from the designated group and one from a non-designated group, with equal merit, surely in the interests of eliminating systemic barriers, which you've alluded to, the employer might legitimately hire someone from a designated group with equal merit. I am wondering what your response to that is.

1030

I just have a short secondary question. If indeed an employer who fails to file a certificate under subsection 11(2) is the only employer who might be required to file a plan or maybe have a plan conferred on them by the commission, would that not lead to excessive auditing on the part of the commission? Wouldn't it make more sense for all employers, as needed, to file those necessary plans so the work of the commission, which is in essence a monitoring one, could proceed unimpeded?

**Mr Bishop:** In the context of your first question, I would say that while the concept of merit may be somewhat implied by the legislation, we're of the view that enshrining it in the legislation leaves no doubt. That's why we're very anxious to see reference in the preamble, hopefully in addition to what is there already, and also in certain sections within the act.

In terms of the example that you used where you have two equal candidates, I would say that the face of

business is changing in Ontario and going forward. As we look out, we think in many ways we're going to be facing a skills shortage as we move forward through the rest of the 1990s. That really is the message for the workforce of Ontario; that is, the development of needed and useful skills in terms of preparing everyone for the employment market in the future is going to be critically essential. I think that with the interest that many organizations are going to have in Ontario to seek out the best-qualified and best-skilled people for positions, we're not going to face too many of the examples you referred to.

Secondly, the nature of organizations as such is that I think we have a strong interest in making sure that our organizations reflect the communities we serve. Indeed, I think that underpins what we think is the proactive, positive business aspect of employment equity. If we reflect the communities that we serve in terms of the demographics of our own organizations, I think our competitive position is enhanced by that. So there will be opportunities, even I think in circumstances like the example you presented, where that will assist the designated groups.

**The Chair:** Mr Fletcher, one final quick question.

**Mr Derek Fletcher (Guelph):** It's good to see you again. I was also at a lot of employment equity dinners in my riding, and when we were talking about the hiring practices I was asking what some of the employers thought about the employment equity legislation that was coming out. They said: "For one thing, why? Because we already have our plan and we've already gone through the legwork to have our plan." Once the why of it was explained, "It's about time that we had some ground rules to work along so that we can get our plan." So I started asking them how they got their plans in place. I notice that many of your organizations do practise employment equity plans. Did you go through the same procedures? Did you have to identify in your workplaces what needed change, how you were going to come about getting people into certain positions, people with disabilities? And when you did your target hirings or promotions, you did do the groundwork first? You went through and did the studies, such as what is being asked for in the act?

**Mr Francis:** The issue of establishing your own road map is going to be different for every company, but I guess you have to do that. There is a requirement within the organization to establish just where you're at in terms of your own systems, and then you build on that for the future.

To go back to the previous question in terms of what happens when you fail to file and why that might happen, the answer is, the more complex the process that is dictated, the more likely it is that people are not going to be able to file because they get lost in the myriad of instructions or the process that is required. So

really, it's a matter of trying to keep the process as simple as possible and allowing each company to set its own road map.

**Mr Fletcher:** Many companies have done it. I'm just wondering, as they have gone through the process, if they've been hiring a lot of unqualified people through their own plans, or have they been hiring qualified people through their own plans, and how is this going to change that?

**Mr Francis:** I think what happens when you start to review these processes is that you do find systemic barriers for the designated groups. While you may not have been aware of those systemic barriers, you become aware of them and then you can start to implement training programs that provide greater opportunity.

Some of the things that you might do would be, as an example, accessibility studies to your organization, physical demands analyses so to determine what accommodation might be required for a person with a disability to do a specific job. You may not have looked at those issues previously, but by doing these things you are able to put in place programs that ensure that if a person from a designated group applies, there are no barriers.

**Mr Fletcher:** That's been one problem that been corrected also—

**The Chair:** Mr Fletcher, we've run out of time.

**Mr Fletcher:** —as far as getting the ground rules and everything in place so that we can remove the systemic barriers that have been there.

**The Chair:** Mr Fletcher, we've run out of time. I'm sorry, we'll have to move on.

I want to thank all of you for making this presentation and for participating in these hearings.

JOE HUEGLIN

**The Chair:** I would like to call Joe Hueglin for his presentation. Welcome, Mr Hueglin. We have half an hour. You've seen how the proceedings work, so you can regulate the time accordingly to allow for the questions and answers.

**Mr Joe Hueglin:** Do you have a copy? Has the copy been forwarded to you?

**The Chair:** Yes, it has.

**Mr Hueglin:** I had some difficulty in putting it together and I'm very pleased in getting it down to you in time. Shall I just begin then?

**The Chair:** Yes.

**Mr Hueglin:** In three weeks from now, it will be 37 years since I first walked into a classroom in Essex South, very close to Windsor where some of your members come from. I've taught on Indian reserves in northern Quebec. I've taught in mixed Indian populations in Blind River, in Welland, in Niagara Falls. In each case I was charged with passing on to our children

the accumulated knowledge of the ages.

As they walk into my classroom this September, they will be taught that there are cause-and-effect relationships. They'll be taught that all people are the same and that they have the same basic needs, that there are ways universal to every culture about how to solve these needs, and in particular, that the outcomes of a particular culture are shaped by the choices made by those who hold decision-making power. That power rests in the hands of this committee and the members of the Legislature.

Few students in Ontario's schools today will be taught of the long evolution from a society where status was inherited at birth to one which reached this apogee in the preamble of the Ontario Human Rights Code.

History is a subject little taught in Ontario these days. Nothing is known of monarchs or aristocrats or of the struggle that went on for centuries in order to obtain democracy. This high point in human development, the Human Rights Code of Ontario, today is threatened by the principles of Bill 79.

The Ontario Human Rights Code set as the ideal for our society that individual capability was to be the standard by which we were to judge one another. Neither religion nor race, sex nor any other attribute that divides us into groups but only individual merit was to be the criterion, and the weight of the law was to fall on those who acted otherwise.

1040

I can recall at the end of the Second World War in 1948 or so, when television was starting to come in, on the Detroit television there was advertising: "Don't be a schmoe, Joe; be in the know, Joe. Religion and race have no place." It happened to stick in my mind because it tied my name into it. But as long ago, then, as 1948, this process was begun when someone in a town outside of Chatham, Ontario, who was black couldn't get his hair cut because the barbers wouldn't do so, and when there were many other aspects of our society that were accepted as the norm.

Now, the Human Rights Code is not accepted universally yet in theory or honoured in practice. But individual merit has become accepted as the ideal to which actions are squared. The word "paradigm" is used. I don't quite understand it completely, but the paradigm has shifted in our society so that merit and individuality in treatment has become that paradigm.

Bill 79 and collateral legislation—the police act—and some of the activities that are going on in universities are destroying this consensus that has been arrived at within our society.

When the upper cohort in current labour force statistics, which run, if I'm not mistaken, from 15 to 65, entered the workforce, there was a minuscule percentage of visible minorities in Ontario. The expectation by



almost all in society was that most women would become homemakers when they married. Have a job, get married, have kids and raise them. Aboriginal peoples had not begun to make their urban migration in significant numbers.

That was then; this is now. But the societal patterns of 1948 are still reflected in the labour force statistics of today in that the 15-year-old of then is the 65-year-old of now. These are the statistics that are being quoted in percentages still. The reality that gross labour statistics being used to justify employment equity are reflective of another age is ignored by those seeking to impose their views.

These "equality seekers," as Alan Borovoy used the term yesterday in the *Toronto Star*, are also unwilling to accept that individual merit has become the accepted norm and that, properly administered—and it is most improperly administered—the Ontario Human Rights Code could deal with those who discriminate. They accept anecdotal and impressionistic data as valid. They ignore serious studies that differ from their predetermined points of view. Statistics based on studies of 150,000 job leavings, the whole of the labour force of the 1986 census, are simply swept away without consideration. They press forward with remedies for problems that are in the process of being resolved through evolution in the marketplace. If 80% of the workforce is going to be of designated groups, these groups are going to have to be employed, whether the employers want to or not. They refuse to even consider that Bill 79 is a remedy that ignores reality and is destined to undo the positive effects of the Human Rights Code.

Bill 79 does not focus on the competency of individuals in that nowhere in it is capability mentioned. Rather, it divides society into groups and by fiat declares that employers shape their workforce, not towards efficiency so we can compete in the world, but to arbitrarily arrived-at figures, under threat of having their enterprise effectively taken over by the agents of the state if they do not submit.

The effect of the collateral laws forcing quotas on police forces has led to rising antipathy among Euro-Canadian males and their families. Assigning quotas in universities, such as is occurring at Brock University in the Niagara Peninsula, has resulted in antipathy among Euro-Canadians of both sexes, unlooked for, unsought for, indeed unwanted.

Gratuitous comments on both these matters are made by students in the classroom today. Their justice is questioned as is the validity of the principle of equality before the law that is taught as being the basis of our system of government. As one tries to teach civics, the idea of the equality of all is rather difficult when these things are being raised against you or against the principle.

Should Bill 79 be made law, and its principle, and I

think I'm quoting paragraph 2 of section 2 correctly, "Every employer's workforce, in all occupational categories and all levels of employment, shall reflect the representation of aboriginal people, people with disabilities, members of racial minorities and women in the community," be imposed, this disquietude will increase.

The reflection is based upon Statistics Canada, at least in the police act, not upon labour force participation but upon Statistics Canada. The Niagara Peninsula I think is 52.6% female, although the participation rate by women is far below that.

If this principle be put into effect as it stands, the educational system will no longer be dedicated to having each individual developing to the highest potential possible. I read the *Toronto* papers. I see the high-level students who are in the papers at the end of the year, and I would say there is employment equity or at least education equity in the top-level students as I see them, because these people are certainly not reflective of 90% Euro-Canadian background.

Rather than this, training in all occupations—to be electricians you have to train electricians—at all levels would have to be shaping individuals to fill the employment equity-generated numeric goals. If you are producing 2,000 electricians in a year, and you have to fill these positions, then the educational system has to be put in that direction. Perhaps you can explain to me how it would work otherwise.

History has shown, and I would argue this with anybody, that state-generated plans fail. It is ironic indeed that while eastern Europe is seeking to adopt the free market economy to regenerate its societies—and the *Toronto Star* is running articles on the successes of the Cuban revolution—Ontario is moving to a plan that constrains all business and education to state-set goals.

As a student of history, a teacher and parent of a dynamic 18-year-old daughter, whom I will stand up against any male in any way, shape or form, I can do no less than to ask that the committee consider the effects of the course the government is setting our society upon, because I firmly believe it is counterproductive to what the Ontario Human Rights Code has achieved.

That's my statement, perhaps too long. If so, I apologize. I stand open for any questions.

**The Chair:** We'll begin with the third party.

**Mrs Witmer:** Thank you very much for your presentation. It's obvious you are sincerely concerned about the bill the government has put before this province. I see that your primary concern, if I interpret this correctly, is the fact that individual merit will no longer be the criterion upon which individuals are hired. Is that correct?

**Mr Hueglin:** I believe that is the most important single achievement that has been developed in our society, that this is the ideal we are to work towards. It

is not found within the bill. As to the gentleman who asked a question earlier, it may be alluded to, it does not exist, and if it does not exist in law, it does not exist.

**Mrs Witmer:** That's true.

**Mr Hueglin:** The secondary thing, but it's tied in with merit as well, is within the education system. It is our responsibility to take what there is there and to develop it along whatever lines and to the best advantage of the student, yet we're establishing a society in which we are going to have to produce, according to this particular principle, certain—I haven't used the word "quotas." I've studiously avoided it. I don't want to. In any case, if you're going to establish goals that mirror the community, you're then going to have to have the educational system directed there or it's going to be impossible to do. So the two things are tied: individual liberty, if you will, to develop the individual on the one hand, and then that the most meritorious person be selected by the employer.

1050

**Mrs Witmer:** I was interested in your comments on page 3. I was rather concerned as well. We know that this bill is being discussed by individuals and groups throughout the province and certainly there has been some uncertainty created, and I would support you. I've spoken to some students myself at the community college and high school and university levels and I can tell you that they are concerned about this legislation. They have indicated to me they feel quite confident that they can compete equally for any job and they really are not interested in this type of legislation which would appear to give some of them a head start.

You mentioned that you've seen this rising antipathy among Euro-Canadian males and their families and I'd like to hear a little bit more about that. What is happening that we need to be aware of?

**Mr Hueglin:** I think perhaps the jokes that exist within a society are to a degree a reflection, or the banter that goes on, and the banter that's going on is: "Well, you've got an advantage over me. First of all, you're female. If you had a disadvantage, then you would have two advantages, and here I am, a white male, and if I had a sex change, then I would have an advantage that would at least be halfway equal to you." These exist within our society. Anyone who has not heard something of this nature lives a very sheltered existence or simply lives within a group that is so oriented in a particular direction. This then is a reflection of the feeling that there is.

One listens to talk shows from time to time. They aren't reflective of everything, but it isn't the men who are coming on, it's mothers coming on. Some poor fellow wrote in and complained about his daughter not being able to get ahead in teachers' college because she wasn't a visible minority. So here we have the father of

a daughter; it's becoming all fragmented, anyone who suggests that it is one group. It's a complete fragmentation.

In the employment equity review in Ottawa when the legislation was being reviewed there, we had visible minority groups coming and saying, "It's not good enough to have 6.3%, we have to have 1.2% for this particular group because the other groups are getting more jobs than we are." That was the suggestion of one group before there.

Either we are viewed as individuals qua individuals or we are being viewed in this way. Lebanon used to be the example. It's no longer the example. You can fill the example in yourself today, if that's the way we are.

**The Chair:** I'd like to ask Mr Tilson to ask one final question.

**Mr Tilson:** There's one question, Mr Chairman—

**Mr Hueglin:** If I talk too long, would you shut me up?

**Mr Tilson:** No, he does that to me; he doesn't do that to you. The question that I have, sir, is that there's no question that if we passed—when I say "we," the Legislature of the province of Ontario—a law encouraging the hiring of white males, I can just imagine what would happen in this province. First of all, it's against the law to do that, I think, I would hope, and yet we're now going to have an employment equity law which is going to encourage the hiring of racial minorities, women etc, and of course you look at subsection 50(2) and that's going to be done by regulation. It's not even going to be done by this Legislature. We're going to have some bureaucrat who's going to list off all the percentages that we're going to have.

My question is, I'd like your comment with respect to the reverse discrimination allegation that is being made, and you have commented on that briefly; at least I think you've commented briefly with respect to remarks that are made. If we're trying to solve a problem of racism or sexism, is this bill in fact creating even more of a problem with respect to racism and sexism?

**Mr Hueglin:** The response I would have in that regard is something that could be called the Cornish report. The Cornish report looked at the Ontario Human Rights Commission, and in there it looked at its composition as of April 1992. At that time it was 62% female, some 14.8% visible minority male and only 15.8% white male, undifferentiated as to sexual preference, okay? I say that because this particular human rights group of people then certainly are not reflective of the community in which they are making decisions, and they appoint tribunals that make decisions the government then accepts. This is what is upsetting people, because we are being divided and because there is not even an equitable representation in many of these



circumstances. You're having a negative reaction and it has to be—what else is it except reverse discrimination if you end up with a body in which there are only 15.8% white males?

Somehow or other the system is filtering out that body which it destabilized as still the most powerful element within our society that goes along with things, that accepts things. It has generally accepted the idea, the concept, the paradigm of individual equality, but if forced into the position of fighting back has the capability of doing so more than any other group has the ability to push forward.

**Ms Jenny Carter (Peterborough):** Thank you very much, Mr Hueglin. You seem to be assuming that all is now based on individual merit. In fact, you even seem to be suggesting that we've gone past that point of fair representation and are discriminating against white males. If so, I'm not sure what your concern about this act is, because implementing it is going to be very easy if, when companies do their surveys, they find they've already achieved or passed the quotas.

Unfortunately, though, I'd suggest that you are mistaken factually. Are you aware of studies other than the ones you quote, such as the report of the Commission of Inquiry on Equality in Employment of 1984 and the report of the special committee on visible minorities in Canadian society, also 1984, which show that relative to other immigrants racial minorities experience high rates of unemployment and less money and are less likely to find work in their chosen field?

It so happens that there is a gentleman present in this room who I understand had wished to present but was too late to get on the timetable. He is claiming, for example, that electricians at the Ford Windsor operation do not show a fair balance. I have some figures here which he has given to me that in 1967 out of 167 electricians—and you mentioned electricians particularly—five were non-white, zero were women, zero were native Indian, and in 1993, 184 electricians, two non-white, no women, no native Indians. So that just is a particular case of the need for this kind of legislation.

Also, we've had previous—

1100

**Mr Hueglin:** Do you have a question for me? So far I've heard no question. I've heard nice statements.

**Ms Carter:** I've asked you if you're aware of these other studies and I'm wondering whether you can support your contention that we have no need for this legislation.

**Mr Hueglin:** Yes.

**The Chair:** Allow the deputant, then, to respond to that.

**Ms Carter:** Okay, yes.

**Mr Hueglin:** There are two macro studies, both of them completed in March 1992, the one done on the

1986 census and the second done on the labour market survey of 1987.

One indicated that in promotions and such, on the basis of 150,000, there was a 10% advantage for females and that there was no indication of problems with visible minorities.

In the second, which was done on the census and had to do with the amount of moneys and such that they obtained, it was considered there after studies—and this was done by a chap of East Indian origin—that the difficulty in large measure has to do with someone coming from another country who doesn't have the language skills, and that after a period of years it becomes equalized. But for someone who was raised in Canada with the same education, that is, someone who began with my daughter in school and went through the school system, there's not any indication of any difference for people of these origins raised in Canada.

These are two large-scale studies completed. They have all sorts of fine things. Many of the studies otherwise are what I call anecdotal on the one hand, impressionistic on the other, or very limited in their data. One has to then weigh the one against the other.

I have asked for these studies I've come across to be refuted with proof, and they're very simply dismissed or ignored. To me, for the 17,000 businesses in Ontario and all these people having to be disrupted, the burden of proof is upon you to disprove the data I have, because you are the ones making change in our society. Yet no, neither the commission nor the minister nor my member nor the regional caucus of Niagara, will respond and say, "These are wrong because...." But the burden of proof is upon you to—

**Ms Carter:** Of course, once this legislation—

**The Chair:** Ms Carter, you're running out of time. I want to ask you whether you would like to have Mr Wiseman have a turn at a question or whether you want to complete it.

**Mr Wiseman:** Go ahead.

**Ms Carter:** Could I just make a further point? As this legislation comes into force, of course we shall find out whether what you're claiming is true, and everything we hear suggests to me that it is not true.

**Mr Hueglin:** I heard some years ago of people saying we should legalize marijuana, but the burden of proof was upon them, and it was not put in.

**Ms Carter:** I'd also like to ask you, finally, who you represent.

**Mr Hueglin:** I represent me. If you want to know of all of my varied activities in life, I'm a father—

**The Chair:** He's representing himself. Mr Wiseman, one final question.

**Mr Wiseman:** I've been anxious to put this story on the record for some time, and I think it apropos. I

taught for 14 years in a school in Ajax, and it has become a multiracial school. I was elected in 1990, and some of the very first people who came in to see me were two young women. One happened to be black and the other one was white. The black one went into a store where they had a job sign posted—incidentally, it was one of the stores that's listed in this Business Consortium on Employment Equity—and she was told that there was no job. She thought, "I don't particularly like this." Being an enterprising young person, she sent in her white friend. Her white friend went in and got the job.

That is one of the stories. As a teacher who taught history and civics, the question I was constantly confronted with is: "How can we allow, as a society, this kind of discrimination to continue? What are we going to do about it?" It's not just that one story. If it were just the one story, perhaps I would look at it with some jaundice, but it's not. What I've heard from the students I taught is that this continues, it's rampant, and that they can't even get through the door.

**Mr Hueglin:** Did you take that to the Ontario Human Rights Commission?

**Mr Wiseman:** Yes, I did.

**Mr Hueglin:** Did the Ontario Human Rights Commission act on it?

**Mr Wiseman:** They are continuing to look into it.

**Mr Hueglin:** How long ago was it?

**Mr Wiseman:** It's about a year, a year and a half.

**Mr Hueglin:** My problem is this, right? It does take time in the Ontario Human Rights Commission, but if that firm were very quickly dinged for doing wrong, then that change would become more and more secure within our society.

**Mr Wiseman:** I don't agree with that—

**The Chair:** Quickly, Mr Wiseman; we're running out of time.

**Mr Wiseman:** —because what they would do is they would find a more subtle way of doing it, as they have done in other places.

**Mr Hueglin:** Fine. Then you consider that they are flawed beings from the beginning.

**Mr Wiseman:** What I consider is that there is no protection for people who are going into these situations in order to get a job. There isn't the level of education necessary to tell these people that what they're doing is not in the best interests of society.

**The Chair:** Mr Hueglin, we have to move on to the official opposition.

**Mrs Caplan:** I have a question. I think the case Mr Wiseman just put forward speaks volumes to why this legislation isn't going to fix the—

**Mr Hueglin:** No, it speaks volumes to the inad-

equacy of the implementation of the Ontario human rights legislation as enacted. It is not the flawed law; it's the implementation.

**Mrs Caplan:** Is this a fair statement: that the creation of yet another bureaucracy, in your view, is not going to solve the problem either?

**Mr Hueglin:** That is correct.

**The Chair:** Other speakers?

**Mr Curling:** Definitely. Let me follow up on this. In your presentation, there are a lot of things I agree with and certain things I would like to have had more time to question you on.

I think you agree that this bill, as my colleagues have said, will not bring about equity in the workplace, and Mr Wiseman will tell you that the bureaucracy itself, the Human Rights Commission, has a backlog and all that.

I want to touch on the merit principle, because you stated that people will be judged on merit.

**Mr Hueglin:** They ought to be, and that's the way we really accept things, even though it isn't always done in practice but should be.

**Mr Curling:** Exactly. The term is "ought to be," and it has not been so.

**Mr Hueglin:** Yes.

**Mr Curling:** Of course, the Conservative Party will put the feeling that we don't need it. I believe strongly that the merit system should be enshrined in the legislation, but it has not been done. But having it in there I don't think would solve it anyhow. We have to have a plan in place.

**Mr Hueglin:** It's in the Ontario Human Rights Code as a principle.

**Mr Curling:** I strongly believe a plan must be put in place, and I'm agreeing with you that the ineffectiveness of the Human Rights Commission has made the situation worse. The bureaucracy can be tidied up, you are saying. Are you agreeing with us that we have something in place, the Human Rights Commission, but all that needs to be done—not all, but if it carried out its duty, most of the systemic discrimination could be identified and dealt with.

**Mr Hueglin:** I would suggest approaching Russell Juriensz and asking him to take it over.

**Mr Curling:** Could you just comment, as the time we have is quite limited: "Though not universally accepted in theory nor honoured in practice, individual merit has become accepted as the ideal to which actions are squared," and you said, "Bill 79 and collateral legislation are destroying this consensus."

You feel that bringing in an employment equity bill that is meaningful and effective will address the issue. It will not address all the human rights issues; it is not intended to address the human rights issues. It's



intended to put a plan in place where we can see that employers have a plan in place for access in the workplace. Do you think it's necessary to have that plan?

**Mr Hueglin:** I have to say this, relating back to something you suggested. The Ontario Human Rights Commission, as it's presently operating, is reaching down into corner stores with its tribunals. We are now going to have a Employment Equity Commission that has the power to demand that every business turn in its plan, a plan that is acceptable, and if not, at the extreme—but I have to take the law as being in the possible—could walk into a business and say: "We are taking over. We are appointing an officer who will put a plan into effect."

I simply do not trust people with that much power. Having seen what the Ontario Human Rights Commission is doing, we do not need another whole bureaucracy that will be able to come down on 17,000 businesses should it so choose. We have to focus upon getting to the individual, letting the person who steps out of line know, as Mr Wiseman said, that they are in for it.

He taught for 14 years; I've taught for 37 years. When students come into my classroom, they know what my rules are. They know that if they create problems they are in some difficulty. Some choose to come in and they live by the rules. Others choose not to come in. No one knows with certainty that that will occur through the Ontario Human Rights Commission, and to me that's where the focus should be: on making the existing bureaucracy work for the individual and, through them, the society, rather than creating another bureaucratic structure.

**The Chair:** One final question.

**Mr Curling:** My last question is, what do you think should be put in place, having recognized, as you said, that studies have been done that have shown these designated groups have been shut out? Whether you want to call it a plan that will put in reverse discrimination—this is the kind of thing you use, and that the Conservatives also use—

*An alarm signal sounded.*

*The committee recessed from 1110 to 1120.*

**The Chair:** Mr Curling, I'd like you to complete that question, but as quickly as you can.

**Mr Curling:** I'm so quick that I took the opportunity to brief the gentleman so he could respond.

**Mr Hueglin:** There are two things, and the first thing is this: We have the Ontario Human Rights Commission which is a car that has been breaking down. We have a choice, and if I had my choice we would fix that car. It would appear that the direction of the government is that it is going to keep that car and it is going to buy a brand-new car, a larger car, a more

intrusive car, which I disagree with.

If, however, the government proceeds, as I believe it undoubtedly will, then this merit principle ought to be in there so that there is equity for all. Without the merit principle, without capability being the operational choice of the business person, we are not going to be competitive. We are going to have problems developing.

This is again anecdotal, to use this term, Mrs Carter. I've talked with people in banks, and there are people who are hired who cannot do the job because of problems, and they have to circumvent it. We're in a competitive world and there has to be that merit principle there.

*Interjection.*

**Mr Hueglin:** No, I'm saying that unfortunately, there are those who are put in the position because of—

**The Chair:** Mr Hueglin, I'm sorry. We have run out of time. Please don't answer that other question because we've run out of time on this one.

**Mr Hueglin:** I'm sorry. I'm unaccustomed to these proceedings.

**The Chair:** That's quite all right. Thank you for your presentation here today.

**Mr Hueglin:** Thank you very much, sir.

NATIONAL ACCESS AWARENESS WEEK.  
ONTARIO COORDINATING COMMITTEE

**The Chair:** The National Awareness Week representative: You have a half an hour. We have another presenter after this. I would remind members that we need to keep within those prescribed limits; otherwise we will run way over time. Would you please introduce yourself? We don't have your name on the list.

**Mr Paul Groh:** My name is Paul Groh. I am chairperson of National Access Awareness Week, the Ontario coordinating committee.

National Access Awareness Week was created at the behest of Rick Hansen during his Man in Motion tour. It's a grass-roots organization that works at a community level. I represent the provincial coordinating committee.

The purpose of National Access Awareness Week is to increase access for persons with disabilities, specifically in six major areas: communication, education, employment, housing, recreation and transportation, and we are obviously here because of our interest in employment. We do not have a specific, formalized policy towards employment equity legislation, but because of our interest we got together and decided to make a presentation.

I should also say that in preparing for this deputation we did see some of the work being presented by Disabled People for Employment Equity and the Alliance for Employment Equity; there will be some themes in common although there will also be some themes

different.

First of all, we would like to applaud the government's desire to write legislation enforcing employment equity. We feel that considerable thought has gone into the development of the proposed legislation, specifically in areas such as the definition of employment equity and the general principles of employment equity.

We like the idea of self-identification for designated group members, at least in principle, and we are pleased with the establishment of an Employment Equity Commission and tribunal. However, we do feel that the legislation can be strengthened in a number of ways, generally by including more employers, not excluding any specific employers, moving portions of the regulation to the act itself, defining clearer specifics and, where possible, moving those to the act also. There are a variety of miscellaneous matters dealing with Bill 79 as I have it here. I will go through those as quickly as I possibly can.

First is the inclusion of as many persons as possible under the employment equity legislation. I think the law must be as broad-based as is possible. I think that exceptions in either the act or the regulation will water down the effectiveness of the legislation.

It has been too easy for individuals, in the past, to avoid implementing employment equity, and we would rather see businesses put an increased effort into developing an effective employment equity plan rather than trying to get around the legislation, trying to avoid doing it.

One of our main concerns is that job definitions frequently defy employment equity implementation, so any exceptions in the legislation, if they are maintained, and I hope they're not, must be extremely carefully analysed, lest discrimination based on job definition be rewarded by inclusion in the list of exceptions.

Perhaps, instead of listing specific exclusions, specific reasons may be included in the regulations or in the act which may allow an employer to decrease employment equity for one or more groups, although I have to be careful there as well, because a sufficiently large organization should be able to accomplish accommodation in the broader employer's workplace rather than in specific areas.

Another thing that we've come across very frequently is cost discussions, and costliness of implementing an employment equity plan really is not an excuse; it's a required thing. We've decided that in the Human Rights Code. It's far too overrated and it simply isn't as costly as many employers think. Much accommodation, particularly for persons with disabilities, can be accomplished by redefinition of jobs, by reassigning job duties, and site accommodation is very cheap if it's a part of site remodelling. Additionally, the government already supports employers through its vocational

rehabilitation services program, and that takes away a great deal of the cost.

Finally, work and progress on employment equity should also not be used as a reason for exclusion from the legislation. There are plenty of provisions currently in the regulations which allow one to continue one's employment equity work without having to start over from scratch.

What I've just stated specifically I would like to apply towards the act in subsection 6(4), the police exemption. I would like that to be looked at very carefully. Job duties can be redefined with the police. In fact, current employment equity investigations show that the police are particularly keen on bringing about employment equity in the force or in the forces.

I have a feeling that the main objection towards employment equity legislation within the police force is with respect to persons with disabilities. Whether or not that is the case, I can find no rationale whatsoever to avoid employment equity for aboriginal persons, members of racial minorities or women, and in fact, possible complaints about employment equity for persons with disabilities—I can only find very tenuous justification.

In the same way I have difficulties in the regulation, sections 4(1) and (2), the exemption of construction workplaces.

Finally, we have real difficulties with the definition of "small business." We feel that the exclusion of small business from a great deal of the employment equity legislation will result in substantial loss of applying that law to a sizeable workforce, some 25% or so of Ontario's workforce. We suggest that perhaps the number that one uses to define a small business be decreased.

#### 1130

That takes care of the inclusion difficulties. The other large area is that we would like to see a great deal of what is currently in the regulations moved to the act itself. There is a need to keep the basic legislation strong, and I think employment equity must be protected from an overly easy modification.

Most persons agree that employment equity is a right and it is enshrined in fact, in a way, in our Human Rights Code so there should be no fear of bringing it into the act itself. Most or almost all of the regulations are referred to in the act and could easily be moved into the act in those areas.

We feel that specifics such as the actual questions which should be asked on a questionnaire, the length of time one has to minimize discrepancies between one's workforce makeup and the greater potential working population, should remain in the regulation. Those are numbers, those are facts that can be changed. However, anything that has to do with the philosophy of employment equity should go into the act to give it the representation in government and to business that it requires.



When we went through the regulations to decide what we were going to suggest to move to the act, we found that almost every section fell into that list.

The workforce survey, that's part II, the review of employment policies and practices, the employment equity plan—considering that the employment equity plan is what the act is all about—should all definitely be moved into the act itself. Parts V and VI, the employees' participation and retaining and reporting of information, are not, in our view, as vital to be moved into the act. However, we can't think of any good reason to leave them in the regulations either.

We think it's required to give that strength of presentation to the public, to employers, in order to be able to actually accomplish some of the things that are in employment equity.

We also have a number of miscellaneous concerns with the legislation. One of our major ones is the concern of the discrepancy between a guarantee of confidentiality of information, because this is being done through self-identification, and the need for an employer to be able to match up questionnaires with specific employees. We think that disabilities such as psychiatric disorders, epilepsy, learning disability and AIDS carry a stigma that will cause some individuals who have these disorders to avoid self-identifying, thinking it might affect their employment, even if they would ultimately win on appeal to the Human Rights Commission.

One thing I'd like to add to that thought: While it's very nice to say that the Human Rights Commission is there and it'll support claims of this nature of discrimination, the process is long, it's tedious and a great many people do not want to go through it.

In a similar vein, in the regulations, section 10(1)(b) makes provision for employees to approach their employers to fill out the questionnaire again because they now feel included. Again, there's a confidentiality issue arising around that which may stop persons from self-identifying.

Also, another note, we feel that both the employer and the bargaining agent in the regulation section 18(3)(b) should be able to appeal to the commission. At the moment, at least in my copy, which is pretty old, I think only the employer has that right.

In the list of accommodations for persons with disabilities, in the regulation section 20(2), accommodations for disabilities are categorized into four groups. We advise adding a fifth, namely, job duty redistribution in the workplace as a whole.

In the regulation section 21, the employer sets numerical goals in the employment equity plan for the designated group in each occupational area or group, yet these numbers are set by the legislation itself. Basically, the legislation is to try to minimize the discrepancy

between proportions of the various designated groups in the employer's workplace and in the population at large. Instead of setting out numerical goals, perhaps employers should be asked to implement a time plan, a time frame, in which the legislation can be brought into effect in his or her organization.

In the regulations, section 37 states that the employer shall consider the comments received from employees re policies and practices, but it does not actually give any way of checking whether the employer actually does so. Perhaps the employer should list in the plan what the comments received were and what was done about it.

Finally, in the regulations, section 40(4) states that an employer does not have to inform employees of a survey before carrying out a previous survey. This doesn't make any real sense because it refers to not having to inform somebody about beginning to do something which is already completed. It just seemed very ambiguous to me. Perhaps that can be rephrased.

In summary, we agree with the idea of the employment equity legislation. The greater part of our disagreement is that the proposed legislation very much relies on the employer's goodwill and decency in implementing a proper employment equity plan. We would like to see that made a bit harder. Also, the extensive use of the regulations to list important portions of the employment equity implementation weakens the legislation in general.

**The Chair:** Each caucus has five minutes. We'll begin with the government members.

**Mr Fletcher:** Thank you for your presentation. As you realize, the purpose of the public hearings that are going on is to listen to the submissions, and then at the end of the hearings we go over what people have said, and then amendments will probably be made. So I'd like to really go on record as thanking you for being here with some of your recommendations.

One of your comments was rather interesting, about how easy it was for employers to avoid employment equity plans in the past. This draft, as it moves along towards legislation, the way I perceive it is that it's one of the steps along the way to getting to where we want to be. To be able to walk in and instantly change something right off the bat is nice, but also has a lot of pitfalls, and we have to walk our way along. I'm looking perhaps to future years or even future months, after we see how this legislation is going. We'll get a working idea and then we can realize where some of the changes are.

I agree with some of your changes. I think we could have been a little tougher with the legislation. I agree with you wholeheartedly. We also have to have that perspective where we can look at every part and then, as the plan starts to move along, try and get things

working in order so that the legislation does work for people.

You've had a lot of experience with people with disabilities and you touched on the cost factor. In your experience, you said that it's negligible, that it's not that much. Could you expand on that?

**Mr Groh:** First of all, I worked for a company that specifically dealt with access technology for the visually impaired and blind. We did a great many job assessments for VRS, which VRS paid for. We supplied equipment, where usually the employer would purchase the computer, which would have to be purchased for the individual anyway, and VRS would fund training on the specialized access technology. In reality, the cost to the employer was exactly the same as the cost for any other individual within that employer's company. There are exceptions to this of course.

One of the things I want to add with the whole idea of the cost is, first of all, that it's much less than most people imagine. Actually, through our own programs, an initiative of doing job shadowing with individuals who have disabilities, with employers, we found that most employers were surprised at how little it would actually cost to do it.

Furthermore, I don't think that the cost question really has any value. This is something which has to be done, period. Whether or not an individual employer would like to or would not like to spend the small amount of money that might be required, I think it's absolutely necessary for that employer to do so.

1140

**Mr Fletcher:** And you could do it—

**The Chair:** Mr Fletcher, I have Ms Carter on the list as well, just for you to remember.

**Ms Carter:** Carry on.

**Mr Fletcher:** Okay. You also mentioned the exclusion of the police services. They are covered under the Police Services Act with their own employment equity plans and that's one of the reasons, that they have their own separate act, that they're not in this one.

But I'm also looking at some of the other things that you'll probably be hearing as these hearings go on, that yes, everyone will agree, the opposition will agree, a lot of people will agree there's a need for employment equity; it's just the wrong plan. Going back to what I said previously about how we can walk along through the legislation and get to a certain position, is this the wrong way to go with this legislation?

**Mr Groh:** If the amount of things that are currently in the regulations are left in the regulations, I think it might be. I think the principles behind the legislation as a whole, the combination of the bill and the regulations, gives a workable employment equity plan for the entire province. I'm afraid that it is too easy to change what is in the regulations if there might be another govern-

ment in the future.

**Mr Fletcher:** Then we have our work cut out for us.

**Mr Groh:** Yes. I think we would end up having to refight the battles that are currently there. I feel a little uncomfortable with giving as much weight to the Lieutenant Governor in Council being able to define employment equity. I think it has to be something defined, argued once in the House, and then minor modifications can be allowed. It's a good plan, but I would like to see it strengthened. I would like to see a stronger statement.

**The Chair:** Thank you, Mr Groh. Official opposition members.

**Mr Curling:** Just a matter of emphasis, where you left off is exactly where I'd like to start. You are agreeing with Mr Fletcher that the legislation is weak.

**Mr Fletcher:** Mr Fletcher didn't say that.

**Mr Tilson:** I thought I heard that.

**Mr Groh:** Actually, I said that. I think that leaving those parts of the regulations which are currently there in the regulations weakens the initiative towards employment equity. I think they're fine directives in many ways, with some of the modifications I suggested, but I think that they can gain weight by being moved into the act itself. In other words, move what's in the regulations right now to the act. Give it body.

**Mr Curling:** So the next question then is what you saw—I'm just repeating what you said. Mr Fletcher didn't say that part. I hope you'd agree. What you saw in the regulation would strengthen the legislation. I know you said it. I just want to be very plain on that.

**Mr Groh:** If it is moved into the act itself rather than being left in the regulation, I think we will have a stronger bit of legislation.

**Mr Curling:** You know the government itself said that the regulation is not for debate here. It may be commented on but not debated or changed. They also said, "That's why we listen, and the consultation, and then we go back and change"—the whim of the five or six members there who will decide if they will change it. But this committee would like to see—I myself want to see—a strong employment equity bill. A weak one would not accomplish a thing. As a matter of fact, it will work in a rather reverse way in acquiring the things you would like to see for access to and employment in the workplace.

**Mr Groh:** But, in all fairness, the fact that whoever put this set of regulations together, I'm not worried so much about them because they've produced this regulation; I'm worried about what happens to them if they change their mind in the future or what happens to other people who might come along in the future. Also, regulations tend to be hidden from the employers who are going to have to enforce this thing.



**Mr Curling:** Well, the bureaucrats have put this together, of course. I feel too that if—I just want—this is what I am fighting for. I am a strong believer in employment equity because of the evidence that's shown of people who are shut out of the workforce. I think it will enhance the economy, it will enhance the employer, because the people who are being deprived out there are people who can contribute. So we have dealt with the merit. I'm quite sure that those who will be let into the workplace are qualified individuals.

Do you think it is necessary for us to debate this legislation without the regulations?

**Mr Groh:** Do you think it's necessary for you to debate the act without the regulations?

**Mr Curling:** Yes.

**Mr Groh:** I think that then the act would be relatively weak. I think that it's important to implement a great deal of the regulations into the act in order to give it the body that we would like to see it have.

**Mr Tilson:** I appreciate your comments on some of the issues of vagueness of the legislation, specifically with respect to the goodwill, that much was being relied on the goodwill of the employer.

There have been others who have told this committee, and comments that have been made in the House, that there is as well all kinds of other vagueness in the bill that is being left: for example, the vagueness with respect to employees, that when they fill out their survey—I think that's the terminology for it—it is the sole discretion of the employee and it cannot be challenged by the employer as to whether they're disabled, whether they're a visible minority, I suppose whether they're a woman. It could go on and on, I suppose.

With respect to the visible minorities and with respect to specifically disabled, therefore, the legislation is relying on the honesty and goodwill of an employee who in many cases in this province is in dire straits. They're fearful of losing their jobs, they're fearful of not being able to get a job and may be prepared to do almost anything, particularly taking advantage of loopholes in legislation such as this.

I'd like you to comment because you've obviously read the bill and you've obviously spent some time on it and the draft regulations. Could you comment on other areas that you feel are being left too much to vagueness and goodwill?

**Mr Groh:** First of all, I'd like to comment on the concept of self-identification. I think it's absolutely required. I think there's no way around it whatsoever. One of the definitions, at least in the Advocacy Act and in other legislation, is that a disability is basically something which someone perceives as a disability. Therefore, if someone does think they are disabled, have a disability in some manner or other, we have to take their word on that particular issue. That I think is not really open to question.

**Mr Tilson:** Can I stop you on that? I understand what you've just said, but my question is, why do we have to take their word for it? Someone could say they're disabled and they're clearly not.

**Mr Groh:** Yes, but if I remember the exact wording of the Advocacy Act, I believe it says something such as anybody who has a disability, whether physical or mental, whether visible or not seen, whether perceived or actual. The thing is that if people feel themselves to be disabled, then they are and they do in fact have a disability.

**Mr Tilson:** And that's the problem because we're talking about partnerships, a wonderful word that was conceived by this government, I believe, and it may be a legitimate word. We are talking about sharing our problems more with employees, with workers, with landlords, with tenants, with all different groups, depending on which piece of legislation you're looking at, and clearly this is one.

The difficulty is, there doesn't seem to be any challenge to something that the owner of the business, the employer's business—you have commented on that, that we have to rely on the goodwill of the employer, and I simply say, I may agree with you. I don't know whether I agree with you on all of the sections you refer to, but I agree with you on some of them, that there must be ways of challenging that.

Similarly, I raise the question, if these people are trying to run this business, there has to be some policy, some accuracy. We just can't rely on the goodwill of people to say that they are such-and-such, whether perceived or not.

**Mr Groh:** I can't understand why the employer would be upset with an individual declaring himself disabled or not. I might be upset—

**Mr Tilson:** Why, sir? Because subsection 50(2) is going to say that this government is going to assign to bureaucrats to determine that there must be such-and-such a percentage of the very designated groups. That's why they should be concerned.

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**Mr Groh:** But the business isn't going to care, because the business is going to have all the numbers it wants from employees who have self-declared disabilities.

**Mr Tilson:** I agree except the flaw in it is that they may—

**Mr Groh:** It's wrong for the community of disabled persons.

**Mr Tilson:** I'm sorry sir, would you repeat that?

**Mr Groh:** I can see a major flaw. This could be an argument perhaps for the community of persons with disabilities.

**Mr Anthony Perruzza (Downsview):** On a point of

order, Mr Chair: My point is that there's this dialogue going back and forth and not going through the Chair, right?

**The Chair:** It isn't a point of order, Mr Perruzza, I'm sorry. Continue, please.

**Mr Tilson:** Can't I talk to him?

**The Chair:** Mr Tilson, continue, please.

*Interjection.*

**The Chair:** Mr Perruzza, it's not helpful.

**Mr Tilson:** I want to talk to him.

**Mr Perruzza:** You're not listening to me.

**The Chair:** Mr Tilson, if you address yourself again as a final question to the deputant, that would be helpful.

**Mr Tilson:** One other question, because you commented that you support in general the principle of this legislation. My question to you is, is the Human Rights Code adequate? Is the Human Rights Commission doing its job? If not, could not amendments be made to those pieces of legislation that would deter even further discrimination of any sort of these various groups?

**Mr Groh:** I do not think that the Human Rights Commission is sufficient for the purposes of employment equity. I think it becomes a roundabout way of trying to enforce something which has been agreed to by pretty well all parties in question.

I think that one has to have the actual employment equity system in place at the government level, something which employers can approach, something which employees can approach, in order to be able to really give it some bite. I think that trying to do it via what must be considered a third party is going to end up weakening or lengthening argument.

**The Chair:** Mr Tilson, we have no more time. I do want to ask of the members, Mr Winner would like to make a technical point on a matter that Mr Groh has raised, either through a point or a question that needed some clarification. Do we have unanimous consent to do that?

**Mr Tilson:** As long as it's off their time.

**Mrs Caplan:** No.

**The Chair:** Thank you, Mr Groh.

COALITION FOR LESBIAN  
AND GAY RIGHTS IN ONTARIO

**The Chair:** Next is the Coalition for Lesbian and Gay Rights in Ontario. Welcome, Mr Mulé. We have half an hour. You know how it works. You can begin any time.

**Mr Nick Mulé:** Good morning. As a spokesperson for the Coalition for Lesbian and Gay Rights in Ontario, it is important that I express the anger that is felt by lesbian, gay and bisexual communities across Ontario with regard to the proposed Employment Equity Act.

The basis of this anger stems from the fact that our provincial government has actively engaged in a process of excluding lesbians, gay men and bisexuals from a proposed act that ironically has the word "equity" in its title, this despite our consistent dialogue with the government on this issue.

If our government intends to bring forth Bill 79 in its present form as a major contributor to the development of human rights in this province, it will lack moral teeth and ethical strength. Our communities will hold this government responsible for engaging in an act of discrimination, for that is precisely what is happening here.

I'm going to move on now into some of the arguments that were put forth to us as to why we were excluded and then from there get into the recommendations.

One of the issues was that there is a lack of research to actually pinpoint that gays, lesbians and bisexuals in Ontario do suffer from systemic discrimination in the workforce. Our response to this is that's really a catch-22 that we're placed in, because no past government nor the current government has ever taken the time to ask those specific questions of our populations in this province. If any government is willing to do that, it has to be very prepared to deal with the sensitivities of our communities, because many people are not prepared to come forward to researchers about their sexual orientation.

A second issue is the quantitative targets. There's a strong emphasis in this proposed piece of legislation to come out with numbers for equitable representation, which we support. But specific to our issues and our concerns, we are not fighting to be included in this for the quantitative reasons; we're fighting to be included in it for the qualitative reasons.

The government was concerned about outing members of our communities in order to reach certain goals. We don't feel that's an issue, because again we are focusing on the qualitative side of things and there's also protection in the act in and of itself that people can volunteer information about themselves. So we're protected in that area.

A third argument has been the anti-harassment provision. We've been told by the government that there is an intention to bring us in under the anti-harassment provision of the Ontario Human Rights Code, which is long overdue, but we don't see this as a replacement for this piece of legislation. Other groups have this protection and they're being brought forward under employment equity. We don't feel that we are any different with regard to the kind of protection we require as well.

Also, it has been mentioned that when diversity education with employers takes place, this government intends to cover all the characteristics that are pointed



out in the Ontario Human Rights Code, which would include sexual orientation. Although on the outset this can be seen as something positive, we are alarmed by the fact that if you are educating employers to be sensitive to our needs and yet they turn to the black-and-white copy of Bill 79 and find we're not listed, it sends a mixed message and ultimately puts forth the message that when it comes to sexual orientation we do not require or warrant the same protection this piece of legislation could provide us, and we disagree with that.

I want to point out as well that we do support the principles of this act. That's why we want to be a part of it. Gays, lesbians and bisexuals find themselves in the four designated groups as it is, but those people are really resentful of the fact that they have to compartmentalize themselves in order to receive certain kinds of protection.

In other words, what's happening is that the message coming forth is: When it comes to your sexual orientation you must closet yourself by being female or of aboriginal status, disabled or from a racial minority group that warrants protection, but just hide what your sexual orientation is, and that's not acceptable.

I'm going to move on now to the recommendations, and we have eight of them. These are also revised from the original brief that we submitted in October 1991.

(1) Ontario's commitment to achieving employment equity must specifically include equity for lesbians, gay men and bisexuals. The four designated groups included in employment equity guidelines—aboriginal people, people with disabilities, members of racial minorities and women—should be expanded to include lesbians, gay men and bisexuals in the preamble and all sections that deal with qualitative goals and measures.

This is necessary because of the pervasiveness of heterosexism, homophobia and biphobia in Canadian society. It is particularly needed in light of the omission of sexual orientation from the grounds of discrimination, specifically prohibited in the Charter of Rights and Freedoms and the Canadian Human Rights Act.

(2) The Employment Equity Act should contain a general statement of principles against discrimination in the workplace. This statement should make explicit reference to heterosexism, homophobia, biphobia and discrimination on the grounds of sexual orientation.

(3) The Employment Equity Act should require employers to provide for all their employees a positive work environment free from discrimination on all the grounds set out in the Ontario Human Rights Code.

(4) The Employment Equity Act should provide the Employment Equity Commission with a mandate to undertake public education designed to promote equity in workplaces. The act should also contain provisions to ensure that adequate government funding for such education is readily available.

(5) The act should adopt regulations or guidelines on public education designed to promote employment equity. These regulations or guidelines should provide for consultation with communities affected by the provisions of the act and for their participation in such education activities. The components of a public action strategy should include:

—Government sponsorship of seminars and other activities directed at employers to promote acceptance of employment equity and to encourage the maintenance of positive work environments for employees.

—An acknowledgement that the categories set out in the act are not mutually exclusive, so that employees may be affected by discrimination or barriers to advance on more than one ground.

—Written materials on employment equity including materials that deal specifically with heterosexism, homophobia and biphobia in the workplace; government-funded research into issues related to heterosexism, homophobia, biphobia and sexual orientation discrimination in the workplace, including the collection of data on the numbers of lesbians, gay men and bisexuals in Ontario's workforce, and this data must be collected in a manner which ensures the confidentiality of respondents.

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(6) Employers in Ontario should be mandated to carry out the goals within the timetables as stipulated in the Employment Equity Act. Thus, the Employment Equity Act should contain effective mechanisms for dealing with employment inequities; the emphasis should be on removing discriminatory treatment or practices rather than merely mediating disputes between parties. There should also be significant penalties for violating the provisions of the act.

(7) Those sections of the Ontario Human Rights Code which prohibit harassment in the workplace should be amended to include harassment on the basis of sexual orientation.

(8) The definition of "spouse" and similar terms in various Ontario statutes should be amended to provide legal recognition to same-sex spousal relationships.

**The Chair:** Thank you, Mr Mulé. We have seven minutes each per caucus. Official opposition members begin.

**Mr Tim Murphy (St George-St David):** I have a few questions, if I may. First of all, thank you very much for your presentation, and I appreciate it. I think it's an excellent one. I read the We Count report before, as you know.

I asked the minister yesterday why in fact gays and lesbians were not included as a designated group and I also asked why not francophones, and in the minister's answer I heard a willingness to include the francophone community if there were sufficient data. I'm not sure I

heard the same willingness in regard to the gay and lesbian community.

Perhaps we'll hear differently, but two issues were raised by the minister in the response. One was the issue of self-identification as a barrier to inclusion, and the second was the question of information about whether in fact gays and lesbians were a group that was suffering from discrimination in the workplace and as such needed an access to an employment equity legislation. I'm wondering first of all if you can just comment on those two reasons for not being included in the act.

**Mr Mulé:** Sure. As I mentioned in the arguments, it was put forward to us by the government that it was concerned about this act potentially outing people in order to identify themselves. But the act itself protects employees from this, and it's a perfect fit for our communities. If you look under part III, subsection 9(2), where it talks about the voluntary giving of information, if people are prepared to be out about their sexual orientation, they can be honest about that; if they're not, they can choose not to divulge that information. So it's not really an issue for us.

Your other concern about whether in fact we do suffer consequences in the workforce, once again it's an issue of research, and that's a multi-issue because it has never been done; no government has bothered to ask the question. Secondly, one has to be very careful with that because of the sensitivity of people feeling confident enough to come forward about their sexual orientation. But again the emphasis here is on the qualitative measures, not the quantitative, so that's really the main emphasis.

**Mr Murphy:** Can I ask, just to follow up on the information, does your organization or do any others have any even anecdotal or other kind of information about what you feel to be the discrimination in the workplace against the gay, lesbian and bisexual community?

**Mr Mulé:** There is a lot in terms of what we hear from our phone lines and support groups; you get a lot of it. It can be from really subtle things: a straight employer taking in applications and interviewing people and his or her concept of what a gay, lesbian or bisexual person is. If they assume the person is, they may choose not to offer that job to that person without really knowing, and that's a real issue. If people fall under what one would call stereotypical characteristics, they can find themselves having a hard time finding work.

Another example, a really hard-core one—this was just a matter of months ago: The Sexual Assault Centre in Hamilton advertised a position as coordinator of volunteer services in which it listed refugee women, disabled women and from racial minorities; they had the whole listings there, aboriginal women, as well as the word "lesbian" in there. The social services subcommittee of regional council in Hamilton-Wentworth

threatened to hold back \$17,000 unless they removed the word "lesbian" from their job ads.

This is an example of what we're talking about, where something that could be really affirmative, something that affirms our existence, gets that kind of backlash. That is pretty serious, and lesbians do get sexually assaulted. There's that issue as well. We can hold a real place in the work that we do.

**Mr Murphy:** I would think it's probably fair to say that in many cases where an employee comes out of the closet in the workplace, that represents a real barrier to that individual for, in some cases, effectively working in the workplace, certainly to promotion. Have you found examples of that in your experience or in your organization's experience?

**Mr Mulé:** There can be many of them. That's why there's a lot of silence. That's why there are a lot of people who won't come out. The protections are not there. They just don't exist. There is a real fear of some real reprisals if one comes forth with that, and it's really difficult. It's got to do with some real subtle things in terms of poisonous work environments as well. Something as simple as a social event organized by an employer for people to go to, there is an expectation that people show up with their wives or their husbands, but that's not our reality, and it can be quite a statement if we show up with our same-sex partner, and a real risk at that.

**Mr Murphy:** You talked about the qualitative measures and I think that's an important focus, because if you're looking, as you say, on the application, if the gay and lesbian or bisexual community was included as a designated group, the targeting of goals for hiring by an employer would obviously have the result of targeting individuals who would then be identified in the workforce. It seems to me that if that were going to be the case, either it would be a very courageous individual, often, given the reality of many of the workplaces, or—and I think this is where your focus is correct—the qualitative measures to make an education.

I notice you focused a lot on employers and I think that's important. One of the things I wanted to talk to you about also, though, was the education of fellow employees in the workforce and what you thought could be effective in that regard.

**Mr Mulé:** Like I pointed out in the recommendations, the Employment Equity Commission took that on and did it in a responsible way in terms of consulting with our communities about what exactly needs to be the content of that education, utilizing members of our communities to go out there and do the education. It would be really quite helpful. You know, that doesn't even exist now. That would be a first step, and a very important one.

**The Chair:** Thank you, Mr Murphy. You ran out of time. Third-party members?



**Mr Tilson:** Yes. I was looking through, sir, some of your group's recommendations, and I was also thinking of your concern about the issue of self-incrimination and why individuals should not be required to say whether they are gay or not gay or whether they are lesbian or not lesbian.

My question to you is, does that make that type of discrimination different than the discrimination with respect to aboriginals, disabled, women and visible minorities? In other words, with this type of discrimination, wouldn't it be more appropriate to deal with the discrimination that you have commented on and the discrimination that you deal with in these various types of regulations with respect to the Human Rights Commission as opposed to an Employment Equity Commission? Can't many of the problems you have raised, and even some of the examples you've raised, would those issues not be more appropriately done by the Human Rights Commission?

**Mr Mulé:** I don't think that would be enough, and one just needs to look at the four designated groups. They've been covered by the Human Rights Code for a long time, much longer than we have, and we've come to the realization that systemic discrimination goes beyond that, and we're experiencing the same thing.

**Mr Tilson:** Except the difference with those groups is that they are being asked specifically to identify what they are, in other words, whether you're a visible minority, whether you're a woman, whether you're a whatever, whereas you have made it quite clear that you—when I say “you,” the group that you represent—could not participate even in that survey because that question should not even be asked.

**Mr Mulé:** It could for some people in our communities. No, my main point is that in subsection 9(2) anyone, regardless of whether you're gay or not or if you're a female or what have you, you're asked a question. It's up to you whether to answer it or not, and that goes across the board. So it sits quite well.

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**Mr Tilson:** Mrs Witmer has a question, but I do have one other question and it had to do with the area of education. I think it could be applicable to all groups, because the government certainly with this legislation is requiring that the private sector would assume the responsibility for employment equity rather than addressing the educational equity issues that are primarily this province's responsibility. In other words, I don't know what measures the government has introduced to ensure that members of the designated groups, the groups you represent or any other groups, whether they be francophone or any other groups, have access to education and training programs. Could you comment on that?

**Mr Mulé:** I'm not sure what your question is.

**Mr Tilson:** My question is that we allege discrimination of all kinds of groups and people and individuals, whether it be minorities or not minorities, yet we're talking about educating a society or trying to put other people's views, whether it happens to be your gender or the colour of your skin or disabled or your sexual orientation. We're passing a law—not we, these people are passing a law—that isn't going to deal with that because there doesn't seem to be any specific action taken by this government to ensure that members of any groups have access to education and training programs with respect to their specific fields.

**Mr Mulé:** I see. I think it's imperative. To answer that, I think it's really important. I think this government needs to take action on ensuring that there is education out there.

**Mr Tilson:** I'm getting back to the favourite issue of our party, the Progressive Conservative Party, that of merit. That's one of Mrs Witmer's questions and I should let her ask it. But that's a major concern, just to make the system work. As to what your sexual orientation is or what the colour of your skin is or what your gender is, surely the issue is, are you qualified for the job?

**Mr Mulé:** My understanding of this act is that that's always been the bottom line. You shouldn't sacrifice whether you're qualified for the job for something else. My understanding is that you don't sacrifice that. At the same time, I think people need to understand as well that there are great merits that women bring to their jobs, that people of colour bring to their jobs, that disabled people bring to their jobs, and aboriginal people, as well as gay, lesbian, bisexual people. I'm a professional in the health care and social service fields and those fields are a shambles when it comes to supporting our issues and our needs. We can be utilized in many ways to help straighten out a lot of the concerns that have arisen out of the mess that's taking place. That's only one area, and it's happening in many areas.

**Mr Tilson:** But that's civil rights, not employment equity.

**The Chair:** Mr Tilson, we've run out of time; we need to move on.

**Ms Carter:** As has been mentioned, the minister did discuss this matter yesterday when she made her presentation; I guess you weren't here at the time. She said that when she spoke to people, especially from the gay and lesbian community, of course they were concerned that there be no sexual harassment in the workplace, as we all are, but most of the comments we received back were that they were not ready to self-identify. That is one reason they have not been included in this legislation, because the feeling was that it would not be effective because people in that category would not self-identify. Obviously, it's voluntary, as you've

pointed out, but if people don't take advantage of that, then it doesn't as a group do anything for you.

The other concern is that there simply isn't the statistical information available that there is about other categories, so if you're looking at a workforce reflecting the community there'd be very little to go on in this instance.

I think we all agree that we have to work on educating employers and others and getting rid of homophobia and that kind of positive action, but it does seem as though the emphasis in this issue is not so much on hiring, because probably this wouldn't enter into a hiring situation in most instances, but on the harassment that might happen once the person is in the workforce, and that, as has been mentioned, I think, will be dealt with in the anti-harassment provisions of the Human Rights Code. I just wondered if you could comment on those reasons for not having it in the act.

**Mr Mulé:** Okay, if I can remember all three of them. Your first point is about disclosure, that the minister was saying there are people not prepared to disclose. That's a reality in our communities: There are many who aren't prepared, because that's how intense the oppression is.

But when you were saying to take advantage of something, we can't take advantage of something that's not there, so if we're not going to be a designated group there's nothing to be taken advantage of in terms of coming forward with our sexual orientation. If it's not going to be asked, then those of us who are prepared to be out don't need to point it out. On the other hand too, there are many people considering coming out, and this piece of legislation can be seen as measures of protection they are able to lean on, because there's nothing there right now and there can be some really serious consequences.

**Ms Carter:** I guess that wasn't the impression the minister got from her consultations, so it seems to be a question of the emphasis of the person who's talking.

**Mr Mulé:** That really surprises me, because I was involved with those consultations.

**Ms Carter:** If it would provide a framework whereby people felt safer coming out, then I think that would be positive, but if, even after whatever educational process there is about filling in these forms, people didn't feel confident, then it would be largely self-defeating.

**Mr Mulé:** I think the main point is to give our communities that choice, and it doesn't exist right now. That's the main point on that issue. If we're not going to be designated, then we don't have that option to give an answer or not. There's a message already coming out: "You don't warrant this protection."

**Ms Carter:** I don't think that's the message. I think part of the message is that we have a lot of work to do

on this one, and I think this government is being very proactive on the educational side.

**Mr Mulé:** Once again, if I can emphasize, it's a mixed message. Even if this educational side does come to be, down the road—it's not happening right now—it's a mixed message to employers. You can educate all you want in seminars, but when they go back to following the regulations in the act, we're not even mentioned, and that's quite a message that's sent out there.

**Ms Carter:** But we have the anti-harassment provisions, which is another important component.

**Mr Mulé:** To address that, again we really don't believe that would go far enough. We see the anti-harassment provision as an important one and it's long overdue, but at the same time it doesn't replace the protections that would be in place with employment equity. We don't see anti-harassment as adequately addressing systemic discrimination. It just doesn't. I mean, we're talking about harassment; we're not talking about all the other things.

**Mr Winninger:** Just briefly, because Ms Carter covered a lot of the points I wanted to cover with you, when you were asked, I believe it was by Mr Murphy, for anecdotal evidence as to when discrimination might have come into play in gay or lesbian employees being barred from hiring or promotion and so on, you gave a couple of examples, but one was more of a social nature. You mentioned the traditional office party where employees are expected to turn up with their spouses, usually heterosexual couples.

I think you'd agree with me that this kind of discrimination that's very subtle and really hard to get a handle on exists out there and has to be dealt with, but that kind of discrimination in a social setting, for example, is not what employment equity is about, as defined in this bill.

Getting more to the point, if you don't have demographic profiles, if you can't create the snapshot you need to determine what percentage of the community is made up of gay and lesbian members, what per cent of your workforce is gay and lesbian, and people are reluctant—some are willing to self-identify, others aren't—how can you build a structure that will enable you to implement employment equity precepts when you don't have a sound basis to do it with?

From your point of view, you may see this government, because it hasn't targeted gay and lesbian people, as sending out a message. I would put it to you and ask for your response about whether the problem doesn't lie somewhere in between this government and the community you're speaking for today, in that we don't have the tools we need to adequately address employment equity other than for the four designated groups mentioned in the legislation.

**Mr Mulé:** I think the tools are there; it's just how



you use them. It takes a lot of sensitivity. If there's a problem that lies anywhere, it may be between the government and society, because our reality is that we all can't be out because there are serious repercussions for coming out in this day and age still. I don't think we need to take responsibility for that. I think it's the homophobia and heterosexism and biphobia that exist in society. As I have mentioned, we would not be seen as similar to the four designated groups because there, there are goals you're after, and I understand that. We're just asking for the qualitative protection.

**Mr Winninger:** We can deal with individual complaints at the human rights tribunal, but to deal with it systemically we need adequate demographic information and we need adequate momentum from your community. I don't believe we're sending out the wrong message. I think we're just saying to you that this is an area that has to be subject to further review.

**Mr Mulé:** I'm not so sure. Is the issue, does this government really believe that we don't suffer from systemic discrimination? I find that fascinating. Do you really believe that?

**Mr Winninger:** That's why we have the anti-discrimination provisions in the legislation that your community will benefit from. All employees will be treated equal.

**The Chair:** Mr Mulé, if you want to make a comment, please, without asking questions, because we're running out of time. One final comment on your part in response.

**Mr Mulé:** Just to clarify, all we want is the protection of all the qualitative measures in this act, and if we are going to be included as a designated group, it shouldn't be seen as identical to that of the other four groups. It's the qualitative measures that we're focusing on.

**The Chair:** Mr Mulé, thanks for coming and for participating in these hearings.

**Mr Mulé:** Thank you.

**The Chair:** As a reminder to the subcommittee members, it's 1:15 in room 110, and we'll resume these hearings at 1:30.

*The committee recessed from 1222 to 1334.*

#### EMPLOYMENT EXCELLENCE

**The Chair:** I call the meeting to order. We have Mike Buckborough as the next presenter. Please come forward. Mr Buckborough, you have half an hour for your initial comments and I hope you leave enough time for people to ask you questions. You can begin any time.

**Mr Mike Buckborough:** Just to check, we were short on time preparing our briefs. We have two briefs. I hope all the members have copies of both.

**The Chair:** They'll be handed out. Go ahead.

**Mr Buckborough:** I represent an organization called Employment Excellence. I'm not going to go through the whole written brief, the first one I have, because I came up with something last night that I thought was more appropriate.

Employment Excellence is an organized movement that was formed in August 1992 in Niagara Falls to combat government-imposed quotas in relation to hiring and promotions. Employment Excellence has continued to expand our membership and we now have chapters in every major rural area in Ontario. Our provincial directors meet in Niagara Falls, Ontario, and we have members from both genders and all ethnic backgrounds. Our sole objective is to put an end to government-sanctioned discrimination in hiring practices, including Bill 79.

Employment Excellence believes that Bill 79 is a violation of human rights that will only divide our society into various ethnic groups and has also been based on erroneous information. Employment Excellence recommends:

(1) Bill 79 be completely discontinued.

(2) The Ontario Human Rights Commission should be strengthened to effectively and efficiently deal with all accusations of discrimination in the workforce. This would ensure that individual cases of discrimination are reduced.

(3) The government of Ontario recognize that all residents of the province of Ontario should be treated equally without regard to race or gender or ethnic origin. This will not happen if Bill 79 becomes law.

If Bill 79 does become law, we feel there'll be several negative effects of this legislation.

First, a message will be sent to all residents of Ontario that merit alone will no longer be the basis for hiring and promotions in the province of Ontario. We believe that excellence and merit should be the only factors in determining who gets hired and promoted in an occupation.

Second, we feel that members of the designated groups will start to second-guess their abilities and qualifications, wondering whether they have been hired because of their merit or because they happen to belong to a certain target group.

Third, young white males will become even more discouraged about their futures. At present the unemployment rate for young white men is almost double the national average at 22%. This will send a clear message to young white men that the standards for them are not the same as the standards for members of the chartered groups. Employment equity programs and fire departments have already shown that standards will sometimes be compromised. This was the case with the Kitchener fire department, which lowered its standards for members of the chartered groups.

Bill 79 is also based on the presumption that members of the chartered groups are being discriminated against when they are applying for jobs. We feel the government has offered no proof of this and automatically assume that those doing the hiring in Ontario businesses are racist and sexist. We have a page which is attached that lists eight figures and stats that we've researched. The sources are listed there. These stats indicate that young white males are not operating at an advantage in the workforce as we've been led to believe.

It's also clear that Bill 79 will have a very negative impact on the province of Ontario. The business community will suffer, the merit principle will be jeopardized, members of the chartered groups will begin doubting themselves and it will have a devastating effect on young white males. The only reasonable solution is to scrap Bill 79, strengthen the Ontario Human Rights Commission and send a clear message that racism, including reverse discrimination, will not be tolerated in the province of Ontario.

That's the brief on behalf of our group. Last night while I was at home going over the presentation for today, I decided to come up with something other than what we have here. You'll have to forgive the typographical errors; it was printed up at 4 o'clock this morning. I was up all night doing this, so I'd just like to go over this. This here basically tells you why I started this organization and why so many people, especially young white males, are getting involved in our organization.

I'm 21 years old and entering my third year at Brock University, and quite frankly I'm worried about my future, as are most young people in the province. I come from a single-parent home and have always had to work hard for anything I've wanted. I've never asked for anything for nothing. I go to university full time, have a full-time summer job and work two part-time jobs in the winter to pay for my tuition. When I entered university, I was of the opinion that my hard work and good grades would land me a career that I wanted. Three years after beginning university, I no longer have this opinion.

Two years ago, I decided I would pursue a career in police work. One of the first police forces that I contacted was the OPP. To my surprise, the officer at the desk told me I didn't have a hope in hell of getting hired. When I asked why, he turned around and pointed to a recruiting poster on the wall and asked me if I saw any white males in the poster. I looked at the poster and I said no, and he told me this was why I would never get hired. He said the OPP was only interested in women, visible minorities and aboriginals. At first I didn't believe him, but I soon found out that he was telling the truth.

The next day, I received a letter from another police

force which contained a form which is similar to this one, and I've attached a copy. This is called the Police Services Employment Equity Applicant Survey Form. I'm not going to go over the form; it's self-explanatory. Basically, this is required for every applicant to fill out who applies to a police force in Ontario. This is the only application that most police forces are interested in in the early stages of their recruiting.

When I contacted the police about this form I was told they are required, under the Police Services Act, to distribute this because they had quotas to fill. When I asked what would happen if I didn't fill out the form—it's supposed to be a voluntary form—the officer told me I would never hear from them again. He also told me that they weren't interested in white males, so he suggested I forget a career in policing.

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Not only is it extremely unfair and racist to have quotas on police forces, the required form which is given to all candidates doesn't even list white males. There's nowhere on this form that lists white males. I found this strange, when up to 90% of all applicants to police forces are white males and they're not even listed.

Do you know what it feels like to work hard for something and be told you can't be hired simply because you're a white male? I honestly don't think you do, or you wouldn't be proposing a bill like Bill 79. When I received this form I was shocked and mad, but most of all I was discouraged, confused and I even considered not going back to complete my university education. And I'm not alone. I've spoken to so many young men and some young women about reverse discrimination and there's widespread anger and discouragement out there.

Quite simply, affirmative action is wrong. It's wrong because it treats white males like second-class citizens and promotes discrimination. In fact affirmative action is nothing less than government-sanctioned discrimination. None of us like discrimination, especially when the government supports it. In the case of Bill 79, the government is creating it.

If Bill 79 passed, employment equity survey forms like this one would have to be handed out in almost every job opening in Ontario. Employers will have to be able to keep track of every applicant's sex and skin colour and that is how they will decide who is hired and who is not. The government will no doubt say this will not be the case, but this is exactly what is happening with the police forces right now. As far as this form is concerned, white males don't even exist, and if white males were listed on the form, gender and ethnic background should never be considered a factor in filling job openings.

As a young white male, I beg of you to reconsider this legislation. I'm willing to work hard to be success-



ful, as are most of the young people in Ontario. The white males in this province are becoming increasingly worried about this legislation, and if the government has any sense of decency, it will abandon this horribly destructive and racist piece of legislation.

**The Chair:** Thank you very much. We have approximately five minutes each per caucus. We'll begin with the official opposition members.

**Mr Curling:** Thank you very much, Mr Buckborough, for your presentation. I want to say to you too that I would be concerned if I interpreted the bill as you have interpreted it. I would be concerned if I was a white male. But I think we should understand what the intention is all about.

First, maybe I should correct something that you have said. You said that firefighters, I think it was in Kitchener, would lower standards in order to accept a minority within the firefighters' regime. Did you understand it to be that? Did they really lower standards?

**Mr Buckborough:** Jake Smola, who was—you may be aware of him. He has filed a complaint with the Human Rights Commission. He's a member of our organization. I've spoken with the Kitchener fire department. When they did the initial application and the written testing with the Kitchener fire department, white males were required to have a higher score on the written testing than were females, aboriginals and minority candidates. There was a higher grade that was required for them to pass than there was for aboriginals, minorities and women. There was a difference in score that was required to pass.

**Mr Curling:** This should be explained and corrected, because, as I understand—

**Mrs Witmer:** It has been. The Kitchener council has changed it.

**Mr Curling:** As I understand, the individual himself, then once qualified within that category to obtain the job—and the standards were not lowered. The person may have got a lower mark, but the standards were not lowered.

**Mr Buckborough:** No, that's not the case. The way that police forces and fire departments do their testing is they have different stages. The first stage is a written test. In order to go to the second stage, you must get a successful score on the first stage. In order to pass the first stage, white males—or at least in the case of Kitchener—had to get a higher score on the first stage to pass than the other candidates did.

**Mr Curling:** Let me tell you emphatically that I don't support principles like that. I support strongly the merit principle, that people must be qualified in order to get the job. Are you familiar with any studies that have been done that show that those who are designated within this bill have been shut out from employment

because of whatever categories they carry as designated, in other words, being visible minority, being women, where statistics have shown that they have not had the access to the workplace and have not had access to promotion? Just those designated groups.

**Mr Buckborough:** The most important part of what you said is that they have been discriminated against in the past. Most of the studies that have been done look at the full occupational groups from the age of 18 up to 65. Obviously, I would not disagree that in the past there has been widespread systemic discrimination, but I think if you were to look at recent hiring trends, you would see that there is no widespread discrimination in the system, as we're led to believe. There are going to be individual cases, and that's what the Ontario Human Rights Commission is there for, but I don't believe there's widespread discrimination, where because a person happens to be a minority person or a female, he or she is not getting hired. I don't believe that's the case.

**Mr Curling:** So you feel that discrimination has been corrected now over time.

**Mr Buckborough:** I think it's been corrected with the changing of people's attitudes. I think the younger generation, like myself, definitely has changing attitudes. Our attitudes certainly are not the same as people's attitudes would have been 30 years ago. I think this legislation is a drastic step backwards.

**The Chair:** One final question.

**Mr Curling:** Do you believe there is systemic discrimination that exists in the workplace?

**Mr Buckborough:** You couldn't say there's no systemic discrimination, but I don't think it's widespread. I think in certain occupations or companies there may be, but I think it's also important to look at the fact—for example, in the area of policing, the Police Services Act, which this government passed, has a part which is similar to the Employment Equity Act, and 50% of all applicants to police forces who are hired now must be female. At least 50% of all police officers must be female.

When you look at that proportion to the percentage who are applying, most police forces don't have 50% of their applicants female. In fact, in the Niagara region the deputy chief was quoted as saying that up to 90% of all applicants are young white males. So you have to look at it on an occupational basis between jobs. Not all females want to go into policing. There are certain jobs that different genders are more geared towards. You have to look at that if you say there's widespread discrimination.

**Mr Curling:** My final question would be this.

**The Chair:** Very quickly.

**Mr Curling:** Do you think there is any legislation that should be put in place in order that some of the

discrepancies that still exist about access to the workplace—that people are still continuing to be discriminated against, even though we have the Human Rights Commission?

**Mr Buckborough:** There should be no new legislation. The Human Rights Commission is there. It's not effective right now. Sometimes people are waiting three or four years to have a case dealt with and when the case is dealt with there's a small slap on the wrist for the violator. That's wrong. It should be strengthened.

**Mrs Witmer:** Thank you for your presentation, Mike. I know personally that you speak for many white males, because I've certainly been approached by individuals such as yourself and the perception is that this is reverse discrimination. Certainly, even though individuals like yourself work very hard, you simply are not going to be able to obtain the job opportunities you thought might be available to you. I know that's very difficult.

I guess the government wants to ensure that underrepresentation of the four designated groups in the workplace improves, and so it has introduced Bill 79, which it believes is going to ensure fair and equitable hiring practices. I hear you say that's not the case.

Let's go back to some of the other areas that probably are contributing to the problem, the barriers to access. What could the government be doing? What are some of the pre-market conditions before people apply for a job, or what are some of the other conditions that you believe are preventing the four designated groups from accessing some of these jobs where they're underrepresented? What could they be doing, other than introducing legislation such as Bill 79?

**Mr Buckborough:** I think the most important thing is the education system. If you want 50% of all tow-truck drivers to be female, then there has to be some type of change of mindset in the education system, and that's certainly happened. It's different now than it was 30 or 40 years ago. I think it's a progressive type of thing. It can't happen overnight. But I believe it's happening on its own. There are more female students now in biology, chemistry and the sciences. Twenty years ago, that wasn't the case.

I don't think the government needs to take so much action. I think people are realizing this. People are trying to obtain more equality for all groups, and I really don't think there's a need there for the government to do that much. It can't happen overnight. People are changing their ideas and their attitudes, and I think it's a progressive thing.

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**Mrs Witmer:** What's going to happen if the perception continues to be out there, the perception that—and I guess perception becomes reality—that indeed young white males are being discriminated against and being

prevented from accessing certain occupations? What is going to happen? You've told me about what males feel like. You've said that females feel the same way. What is going to happen, once this bill becomes law, to individuals like yourself?

**Mr Buckborough:** I've got some friends who are actually considering moving out of the province, because we're interested in police work, and it's not a myth that young white males cannot get hired. There are police forces that won't even take an application from a young white male. They'll tell you up front, "We can't take your application because we have to hire a female and a minority person." It's very discouraging and we're going to consider looking for jobs elsewhere.

I considered not even going back to school. What's the point of paying \$10,000 a year for four years to get a BA and then find out you can't use it because you can't get in the career you want to have because they have to fill it with people who may not be as qualified as you are? I say "may not be" because everyone should at least be given the chance. That's not the case right now. I use the Police Services Act as an example because they have quotas or goals in their legislation, which is what this legislation will be like. It's a prototype for this legislation.

We've just started to organize, and—

**Mrs Witmer:** Are your numbers growing?

**Mr Buckborough:** Our numbers are growing. We've tried to do things as far as writing to the commissioner is concerned, or writing to the government, going before committees like this, doing everything in the way that we're supposed to do it. But it's going to get to a point where we're going to be so mad and so discouraged that some people are going to start to do things that are a little bit more radical, like this protest, walkouts. There's going to be a large dropout rate with young white males.

I'm not overexaggerating. There are so many of us who have the idea that we're in university for nothing, that we're there for nothing. We get a BA and we can't use it because we get forms like this that don't even list us. We're not even considered on this form, and that's the way it's going to be with this legislation. It has to be. Otherwise, how are they going to know, to keep track, of what a person's gender is, and ethnic background, unless they hand out forms like this or unless you go and they say, "We can't hire you, we can't take your application, because we have quotas to fill for other members"?

**The Chair:** Moving on to government members, I would remind you that there are five people who would like to ask questions.

**Mr Fletcher:** And there are only six of us here.

I'd like to thank you for your presentation. Just about the OPP, that strikes me as strange that an officer would



say something like that. You were upset when that happened.

**Mr Buckborough:** I was more than upset.

**Mr Fletcher:** Is that the first time you've gone for a job application and you've been discriminated against like that?

**Mr Buckborough:** It's the first time I've experienced, and that was the first police force I approached. I've contacted 12 to 15 police forces and they all tell me the same thing.

**Mr Fletcher:** I think the officer should be fired.

**Mr Buckborough:** Well, they're telling it like it is. If they've got quotas to fill, they've got quotas to fill.

**Mr Fletcher:** To put it in such a way, the way that it was mentioned, pointing to a sign and saying, "Because you don't fit this group, you're not going to be hired," I think is a little heavy-handed in the way of approaching it. I think the approach could have been to explain what the police services are doing and how they're trying to promote employment equity through their system, through their hiring, and how they're trying to show a reflection of what the community is. I think they should have approached it that way, not in the way they did approach it. I really do look at it as perhaps being one of the reasons we need employment equity, so that people are not saying, "You can't be hired because of your colour." You're not the only person who has ever been—

**Mr Buckborough:** That's what they're saying, and it's your government that's instructing them to do that. Your Police Services Act that your government passed has said that 50% of all officers must be female. How can you have 50% of all officers female when 90% of the applicants are white males? That's not fair. If you're going to do that, why don't you go to nursing and say that 50% of all nurses must be male? It's the same type of mentality.

**Mr Perruzza:** Point of order, Mr Chairman: Maybe we can have legislative counsel clarify that.

*Interjections.*

**Mr Perruzza:** The Police Services Act says you must hire—I think we should get that cleared up. You just can't—

**The Chair:** Mr Perruzza, it's not a point of order, but I would remind the members that—we need to take the point of order? Thank you for your assistance. It wasn't a point of order. Mr Fletcher, continue your questions, please.

**Mr Fletcher:** I was just going on. I suggest to you that since you have been through this, it's a good thing for you that you probably were not born female or black or disabled or, for instance, anything, because the number of times that you would have been discriminated against would have been many times worse than

what has happened to you. Again, I go back to the police officers and the police forces, and I'm saying to them—

**Mr Buckborough:** So it's right to tell me that because I'm a young white male, they won't hire me—

**Mr Fletcher:** No, I'm not telling you anything. What I'm saying is there is definite need for employment equity.

**Mr Buckborough:** —or it's right to tell me that I might as well not even put my application in, or it's right to—

**Mr Fletcher:** There is a definite need for employment equity when such things are happening.

**The Chair:** Mr Buckborough, I'm sorry. Mr Fletcher, please place a question. It would be easier in terms of discussion.

**Mr Fletcher:** Thank you, Mr Chairman. I'm finished.

**Ms Margaret H. Harrington (Niagara Falls):** Thank you for coming, Michael. I knew Michael when he was in high school.

I wanted to first of all ask you about the numbers that are members of your organization, and I also wanted to mention to you that you said that this will hurt business; that was, I believe, what you said. I have a quote here from Bob Sutherland from the Royal Bank, who said, "It has undoubtedly benefited our business by gaining access to talented people."

Do you believe that there is no discrimination now? I think you answered the previous member by saying that you didn't believe that, that you realize there is discrimination now.

One other thing you mentioned was merit. I'd like to point out to you that people at this point in time, and I hope you'll agree with me, are not solely hired on the basis of merit. That's the way the system has always been, for decades, and we would like it to be more based on ability and merit. I think you'll agree with that.

I also just wanted to point out that we are not saying that employers are racist. I think you mentioned that. What we are saying is that there is a hidden and unintentional systemic discrimination.

Just to point out to you an example of that, we in this committee yesterday said, "We want to be fair and equitable, and therefore anybody in this whole province, if we put an ad in the paper and say, 'Please apply to come and speak to this committee on a first-come, first-served basis, you will be put on the list to come to this committee.'"

Doesn't that sound fair and equitable? But if you look into it, you will see that it's much more difficult for women, say, who have children who want to come before this committee than it is for, say, a business

person, a man, much more difficult for aboriginal people who, say, live in the north, or disabled people, to come to Toronto and appear before this committee. On the surface it appears fair, but when you look at the reality of people's lives, it is not fair, and that's what we're trying to get at.

I'd just like you to respond to the question, don't you agree that there has been discrimination and that this initiative is needed?

**Mr Buckborough:** I would agree that there has been discrimination and I would disagree that this initiative is needed. I don't believe it's widespread. I think that if the government would look at an objective study, with hiring trends over the past 10 years, just people hired over the past 10 years, you would see that this myth of widespread discrimination doesn't exist. We've presented to you eight statistics from studies that have been done, including an unemployment rate for young white males: It's 22%, almost double the national average. There's something wrong with that. That comes from Statscan.

**Ms Harrington:** I'll pass to my colleague.

**The Chair:** Mr Buckborough has no more time. Thank you for coming and thank you for making this presentation to us.

The following presenters: Dr Anita Ross, Kevin Jones.

**Mr Tilson:** Mr Chairman, on a point of order: In the past we indicated that we might have further questions for the Ministry of Housing.

**The Chair:** The Minister of Housing?

**Mr Tilson:** The Minister of Citizenship. My question is, when will we have an opportunity to ask? I'm thinking, for example, as presentations come; I have a question for the Ministry of Citizenship as a result of this presentation. When will we have an opportunity to ask the staff officials for information or questions?

**The Chair:** We have given you that opportunity in the beginning, when the minister came here to give her own presentation and spoke to this issue, and then you had the opportunity to ask those questions.

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**Mr Tilson:** I understand that.

**The Chair:** We haven't built in, at this moment, an opportunity for the minister to come again to answer questions.

**Mr Tilson:** I didn't mean that, Mr Chairman. I think it was a question Mr Curling may have asked yesterday: If further information is requested from ministry officials who are here in the room today, when will we have an opportunity to ask them brief questions as a result of issues that have been raised by delegations before this committee?

**The Chair:** We can, if the committee wishes, have

a staff member answer some of these questions, technical or otherwise. We can schedule that in the morning—

**Mr Perruzza:** On a point of order, Mr Chairman: Can I just—

**The Chair:** I'm sorry?

**Mr Curling:** But he's responding.

**Mr Perruzza:** Can I make my point?

**The Chair:** Let me deal with this point here before we deal with another point. I think we can, if the committee wishes, ask questions of the ministry staff and ask them to do that either in the morning or at the end of the day. We could do that if the committee wishes. Mr Perruzza, is that—

**Mr Perruzza:** My point is that we have an established agenda, right? There's a subcommittee to deal with these issues and that's probably a better forum, or at the end of the day we collectively, as a committee, can decide to proceed with that. We have presenters and I think we should—

**The Chair:** That's the point, but Mr Tilson is saying, "We would like to ask ministry staff to answer some questions that they might have." We can agree to that if the committee is agreeable to that. We just have to decide at what time we want to do that.

**Mr Winninger:** Point of order.

**The Chair:** Another point of order? Is it a point of order?

**Mr Winninger:** Yes. I thought we had set aside days for clause-by-clause review to deal with exactly the kind of request you're making. We have technical people here. That way they don't have to be here every day of the hearings and take valuable time from the public for whom we've reserved these three weeks. I hope that our subcommittee, when it gets together to discuss this, will be mindful of what we have contemplated in terms of organizing our time for these hearings.

**The Chair:** Just as a reminder, the subcommittee, earlier on, in the beginning stages of this, had agreed or had stated that ministry staff be available to answer questions when that arose. We can schedule it in, in an appropriate way, so that can happen, as opposed to leaving that for clause-by-clause. So I think we can accommodate that in some way at some point of the proceedings.

**Mr Winninger:** I respect the Chair's position.

**Mr Curling:** I have a point of clarification.

**The Chair:** Do we really need to continue that?

**Mr Curling:** Yes. I have a point of clarification. I don't want to be hearing from you, Mr Chair, that it's after the hearings of the day that we have the members of the staff respond. I think what Mr Tilson is saying is that from time to time questions come up that we'd like to ask the minister, who refused to come anyhow and



said that she made provisions for her staff to be here.

**Mr Winner:** She gave time. She was here yesterday.

**Mr Curling:** You got your point and I would like to ask my point.

**The Chair:** But this is the point.

**Mr Curling:** Could you clarify that the question can be asked any time?

**The Chair:** Mr Curling, that's the point I was trying to facilitate. If the committee wishes, it could, at any point the people have a question, take that question immediately and pose it to the ministry staff, or, in a much more orderly way, perhaps leave it for the end of the morning or the beginning of the afternoon or at the end of the day, so there's an opportunity to do that, just to make it easier. Otherwise, it would cause unnecessary complications to the committee, I think.

**Mr Tilson:** Mr Chairman, I didn't mean to get everybody all upset. If I have a question, I will use it in the appropriate time to the questioner and hopefully you'll allow me to ask the question of the ministry official.

**The Chair:** We will attempt to accommodate that.  
IBM CANADA LTD

**The Chair:** Next is IBM. Welcome.

**Dr Anita K. Ross:** Thank you. Good afternoon, ladies and gentlemen.

**The Chair:** You have half an hour. You know how it works.

**Dr Anita K. Ross:** My name is Anita Ross. I'm vice-president, human resources, for IBM Canada. With me today on my right is Kevin Jones, manager of employment equity at IBM Canada. On my left is Laurie Harley, who is manager of public affairs for IBM Canada.

We at IBM Canada welcome the opportunity to participate in the public hearings on Bill 79. While we are a national employer, Ontario is home to just over two thirds of our 10,000 employees so we have a very keen interest in the province's proposed employment equity legislation and the accompanying draft regulations.

Our submission, which you received in advance, covered three areas: First, we explained the perspective IBM brings to the debate on employment equity; second, we offered our general reaction to the legislation; and third, we described three specific areas of concern, along with our recommendations for improvement.

I'll limit my presentation this afternoon to the highlights of our submission so we can leave as much time as possible for your questions.

Let me begin by explaining, briefly, the perspective we bring to the committee.

We're an employer with practical experience in both voluntary programs and programs legislated under the federal contractors' program and the Quebec contract compliance program. We're also an employer that is undergoing revolutionary change.

Our business used to be like a game of chess: You took a great deal of time making decisions, you understood the rules, you planned your strategies, you made your moves one at a time, and each move was critical in determining victory or defeat.

Today business is more like a video game. You are forced to make many decisions simultaneously, the rules are constantly shifting, there are no historical patterns to follow, your strategy is to make as many moves as you can as quickly as you can, and you don't worry about the occasional miss, because victory goes to whoever has the most points and is still around when the game ends.

To succeed in this environment we need speed, innovation and flexibility. That's why our submission focuses on the draft regulations. If they are rigid and restrictive, they simply present roadblocks to change. We're looking for regulations that are flexible and adaptable to our changing workplace and consistent, of course, with the principles and goals of employment equity.

Let me move on to comment on Bill 79.

IBM Canada's overall reaction to the legislation is positive. We congratulate the minister and her staff for the extensive consultation process that surrounded both the bill and the draft regulations. We believe the proposed regulations represent a sincere attempt to balance the interests of all stakeholders and at the same time promote the principles of employment equity.

From our perspective, the most positive feature of the legislation is the degree of flexibility the regulations provide at the workplace level. In IBM's case, they do not restrict our application of the merit principle in hiring or promotion; they allow us to set our own goals and timetables based on external and internal criteria; they allow us to design our own participation models; and finally, they acknowledge past work by permitting the use of previous workforce surveys and employment systems reviews when they meet specified criteria.

Unfortunately, not all the regulations provide the necessary degree of flexibility.

When we took a practical look at the regulations we identified three areas of concern and developed four recommendations for improvement. The three areas are the workforce survey itself, the use of geographical areas, and the use of occupational groupings.

In the interest of time this afternoon, I'd like to focus my remarks on the most practical problem we face: the use of geographical areas. I should add, however, that the issue of occupational groupings is of equal import-

ance strategically if we are to forge a harmonized regulatory environment that reduces bureaucracy and adds value to our workplaces.

Let me look then at the use of geographical areas.

Bill 79 calls for employers' workforces to reflect the representation of designated groups in the community. The regulations, in turn, translate "community" to mean geographical areas, based on Statistics Canada census metropolitan area or census agglomeration groupings. The regulations for compiling workforce data, setting goals and reporting information are then based on these geographic criteria.

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We understand why the government selected geographical criteria, and we recognize it may be a meaningful breakdown for many Ontario employers. We also understand the principles of corporate citizenship and our responsibility to support the communities in which we live and work.

However, the proposed regulations assume that multilocation employers, such as IBM, will find it useful to categorize their workforces according to the 42 geographic areas provided by Statistics Canada. The regulations provide some flexibility for an employer to use census data at the Ontario level but only for numerical goal setting. We'd like to see that same flexibility extended to include other requirements.

Here are some of the practical problems the geographical breakdowns create for us. Our business is not organized by geography. Instead, we divide our company today into four major business divisions: manufacturing, software development, marketing and services. Each division is further segmented into multiple functions. The divisions and their functions cross geographic lines throughout the province and indeed across Canada.

For example, a census geography such as Hamilton includes approximately 70 employees, who report into 10 different business functions. There is no business rationale for us to segregate employment equity data for the Hamilton location or the other 10 geographical areas where we do business in Ontario, but that's exactly what we'd be forced to do in order to comply with the proposed regulations. Obviously, we'd like to avoid this type of bureaucratic workload.

As a national employer, we manage our human resources Canada-wide. We hire and transfer our people freely across all provincial geographies, based on the needs of the business and the skills and interests of our own employees. Relocation is a reality of our business and an important factor in an individual's career development. Regulations that require us to monitor employment equity at the location level could create a barrier to career development for the designated groups.

For example, relocating an aboriginal engineer from Thunder Bay might be in the best interests of his or her

career but not in the best interests of achieving the geographic representation goals. Ironically, in a case like this, regulations intended to promote equity could end up having the opposite effect.

Our employees would object strongly to any employment equity requirements that restricted their individual flexibility to relocate. In fact, it was one of our own employees from one of the designated groups who made this point very clearly to us during a focus meeting we held to discuss the implementation of Bill 79 at IBM.

Our problems are further complicated by the number of small locations we have in Ontario. Of our 7,000 employees, the vast majority, some 6,000 or so, work in the census metropolitan area known as Toronto; the remainder are spread across 10 areas, nine of which have fewer than 100 employees, including six with fewer than 50 employees.

The regulations provide flexibility for small private sector companies. Employers with fewer than 50 people are exempted from administrative obligations; employers with fewer than 100 people face less stringent requirements. All the reporting requirements apply, however, to our small locations because they are part of a larger workforce. It is not our intention to exclude any IBM location from participating in the employment equity process, but we'd like the flexibility to have them participate in a way that's meaningful for them.

We'd also like them to participate in a way that does not expose confidential employee information. Using geographic criteria significantly increases this risk at small locations. When we collect survey data, we assure our employees that the information they provide will be treated confidentially. Protecting employee privacy in locations with fewer than 100 people becomes difficult when you are required to break down the population by 14 occupation codes, by the four designated groups, by male, female and by salary grouping. The provision to designate a less-than-five category does not offer adequate safeguards to employee privacy.

To summarize, the proposed use of geographical areas would force us to develop artificial ways to plan and report on employment equity, would introduce potential barriers to the mobility of our designated-group employees and, lastly, could expose confidential information about individuals who work in small locations.

Our recommendation, therefore, is that employers with multiple locations who normally manage their business at the provincial or national level be given the flexibility to analyse their workforce, set goals and report information using Ontario as their geography. This would avoid the problems we have outlined by letting employers determine how to further classify their workforce based on the way they normally run their business. The approach they select would obviously have to be meaningful to employees as well as supportable to the commissioner.



We see this alternative as totally consistent with the principles of employment equity and with the goal of flexible yet effective regulations.

To conclude my remarks, I'd like to briefly summarize IBM Canada's submission on Bill 79.

Our overall reaction to Bill 79, as I said earlier, is positive. The legislation is balanced and goes a long way to removing many of the concerns raised by the business community during the consultation process.

It is important that the regulations allow employers sufficient flexibility to keep pace with change in the workplace and at the same time pursue the goals of employment equity. We offer four recommendations that we believe will improve the regulatory process without compromising the principles of Bill 79.

The first one is to encourage positive participation in the workforce survey by rewording question 4, section 6, to read: "Please indicate whether you are male or female."

The second recommendation is to introduce a more flexible regulation that would make a resurvey every nine years optional, based on meeting select criteria.

The third one, that I have spent some time describing, is to allow employers with multiple locations who normally manage their business at the provincial or national level the flexibility to analyse their workforce, set goals and report information using Ontario as their geography.

The last recommendation is to develop a new standard for assessing the workplace that moves away from traditional occupation codes to classification based on compensation groupings.

That concludes my full remarks. I'd welcome any questions you have and I would invite my colleagues to participate if it's appropriate at any point.

**The Chair:** Thank you, Dr Ross. We'll begin with Ms Witmer, five minutes.

**Mrs Witmer:** Thank you very much for your presentation. I really want to congratulate you on the work you've already done.

You've indicated here that you're dealing with the regulations, but one of the questions I would have for you, Dr Ross, is, are you suggesting in any way that the government should be placing these regulations and these amended changes within the bill?

**Dr Ross:** Not necessarily, although I know there are various groups who want to see certain things strengthened right within the legislation. I'm certainly not an expert in writing of legislation, but to me legislation comes alive when you look at regulations so I look on regulations as being every bit as important as the legislation itself, but the degree to which you can clarify things right within the legislation is important.

**Mrs Witmer:** I'd like to focus on the workforce

survey. You've done an excellent job on the geographical area explanation. You indicate here that the reason you'd like to see the need to resurvey done away with is because it's very expensive and very time-consuming. I know my colleague Mr Tilson has been concerned, and that's one thing we're not able to get a handle on; that is, the cost. Obviously, you've had a lot of experience and you've devoted a lot of staff time. Can you elaborate on the expense and the time consumption involved?

**Dr Ross:** We have indeed, because we are a contractor to the federal government. Yes, we have many systems already developed to look at employment equity etc, but today if we look forward to doing a separate survey to meet Ontario's regulation it would cost us somewhere between \$75,000 and \$100,000, we figure, and that doesn't include salaries; it certainly doesn't include the time or the salaries of people who would participate in whatever participatory model we might choose to use.

So it's not insignificant, and of course for employers such as ourselves, who are required to respond to employment equity legislative requirements at several levels, federal, provincial and even municipal, this does become a very significant burden, and therefore the degree to which we can have some harmonization of the legislation is essential, I'd say.

1420

**Mrs Witmer:** I appreciate that, because I know one of the concerns for the employer community has been the cost of compliance, and certainly the survey is a big part of the cost. I know my colleague has a question.

**Mr Tilson:** I have one question. I asked that question this morning, the issue of cost, to the Business Consortium on Employment Equity; some of them are in the room this afternoon, in fact. Of course, they pointed out that the larger firms already have certain equity departments or sections in their firms now and that the real tough part would be with respect to the small firms. I understand that, because I think that's going to be the problem; it's going to be the 50-to-100-employee firms that are going to have the real problem.

But the concern that's been raised periodically has to do with the fear of a mechanism that is going to now be developed with the Employment Equity Commission that will prompt vexatious complaints particularly by certain groups, advocacy groups—I don't mean that in a derogatory sense—but certain groups that are targeting large firms, high-profile firms, that will take away the resources that both the company and indeed the government need to devote to perhaps more positive things. In other words, the suggestion in some of these complaints is that larger firms, believe it or not, may become vulnerable because of this possibility. Have you or any of your people who work with you directed any of your thoughts towards that fear, or is it a real fear?

**Dr Ross:** We haven't directed a lot of our thoughts towards it. That would be a most unfortunate situation, if we spent all our time fighting against things rather than putting our efforts and dollars and energies towards positive programs that certainly are—there is obviously still a lot of ongoing education needed for everyone. If for some reason those sorts of things started to happen, I would hope that the government, any government of the day, would step in to ensure that vexatious complaints just wouldn't receive its support.

**Mr Tilson:** So your position is just to hope that it won't happen.

**Dr Ross:** Yes, at this point it is.

**Ms Carter:** I'd like to congratulate you on a very constructive presentation and on having already for some time been implementing employment equity in your firm. I note that you said that this does not restrict the application of the merit principle. I'd like you to enlarge on that a little, if you could, because we're being told that because of this legislation we shall not be able to hire people because they are qualified for the job.

I wondered if you'd also tell us about your employment equity initiatives, what benefits the company has derived from these and how you measure your progress.

**Dr Ross:** In terms of your first question on merit, this is absolutely critical to our business. It is essential. It is something that is at the core of our business and has been through our 75-year history, and we would be fighting very strongly if we sensed that the legislation prevented us from continuing with that philosophy. We have always hired, paid and promoted based on merit.

**Ms Carter:** So you don't see Bill 79 as any threat to that?

**Dr Ross:** Not for us, and I speak for IBM Canada here. But I understand that that is something we must all work very hard to ensure that everybody else understands. It is absolutely critical that the best-qualified candidates continue to be hired and promoted etc.

In terms of employment equity overall, again we are fortunate that the notion of equal opportunity, equity, non-discrimination, all of those notions, are embedded in our business, in our culture, if you will; they have been with us for decades and therefore we are not starting with new notions here. Everything we do, though, I must say, all the programs to assist our people to have more flexibility in the workplace, get ahead in the business, are programs that I would call inclusive. They include everyone, and that does mean white males. We find that we can very easily make progress in the workplace, introduce things that are good for everyone. We don't have to exclude people and we have no intention of doing that in the future.

**Ms Carter:** So that's part of your philosophy of being up to date and playing the game.

**Dr Ross:** Of being a good employer, yes, absolutely.

**Ms Laurie Harley:** Could I just add a comment on the merit principle? I did sit in this morning and I heard a number of the presenters. If there were a way of strengthening that concept within the bill itself, we would obviously welcome that as well, but we've worked very closely with the minister's officials and the staff in the consultative process, and when we look at section 24 of the regulations and see five points listed there that talk about the same kinds of things that to us are merit, that says to us that we can do what we have traditionally done and not be at odds with the regulations or the bill. That's the basis on which we say we don't think this is at odds with the way we would operate our business normally.

**The Chair:** Mr Winninger, one final question.

**Mr Winninger:** I too would like to commend you on your presentation and compliment you on your initiatives. I'd like to focus on your third recommendation, which would allow employers to use province-wide criteria in the analysis of the workforce and goal-setting and reporting of information. Quite clearly, companies such as your own need to have some flexibility, and I'm sure the minister will be quite interested in your presentation.

On the other hand, I have two difficulties with your approach to this, the province-wide approach. One is that in a municipality such as Toronto, you may be diluting the representation in the composition of the workforce by imposing a province-wide criteria in some of these areas—perhaps not females, but perhaps in the other three designated groups. That was one concern I had.

Another concern: This comes back to your example of a company's requirement to perhaps bring in a native engineer from another part of the province and some of the administrative difficulties around that. Let's say Metropolitan Toronto has anywhere between 50,000 and 100,000 people of aboriginal ancestry. Clearly, if you were to analyse your workforce on the basis of the geographical area of Toronto, the census metropolitan area or whatever, you might find that you wouldn't be required to bring in a native engineer for a particular job, whereas in the north, where native people constitute a much higher proportion of society, clearly there the need would be greater.

So it would seem to me that by adopting province-wide criteria that aren't responsive to the particular composition of the population in a specific area, you'd be inviting more of these imports. While you may be obliged to conduct your review and analysis based on the local population, it's still open to you to bring in people from other parts of the province, but at least you'd have a workforce that more accurately reflects the composition of the population in a particular area. I throw these concerns out for your response.



1430

**Ms Harley:** What you described would make ultimate sense if the skills we were looking for when it comes to hiring are readily available in all the geographies of the province or indeed of Canada, and that's—

**Mr Winninger:** Sorry to interrupt, but my point was that you don't have to find those people in a specific geographical area. That was my point.

**Ms Harley:** There's a distinction between hiring them and maintaining them, and I think that was the illustration we wanted to make. For example, you might be able to hire an aboriginal engineer more readily in Thunder Bay since there may be a larger aboriginal population in that city, but if that engineer is to progress and be offered the same career opportunities as any other employee, that engineer would want to perhaps move out of that location to Toronto. If we're forced to assess our progress in Thunder Bay, we may not want to let that person leave Thunder Bay because that individual represents our geographic representation. If that person moved, we might lower our numbers and therefore—

*Interjection.*

**Ms Harley:** Exactly. There's a danger that you could be forced into doing unnatural things.

**Mr Winninger:** But no one, I think, under an employment equity plan would fault you for advancing the career of a designated group member. That was the only point I wanted to add.

**The Chair:** We're running out of time. Official opposition member.

**Mrs Caplan:** The arguments that have just been put forward I think have been the best arguments for the changes that you've recommended as far as the issue of geography in this legislation, both from the interests of the employer and the interests of individual employees who want advancement.

The government's been making the case and trying to say that this legislation will not impose quotas, but after listening to the discussion with Mr Winninger, I'm convinced that if this legislation goes forward as it is, that will be the result. I too, as I ask my questions—and I just have a couple of small ones.

IBM, we know, has gone through a number of changes in the last few years and the human resource leadership that you've shown not only in the area of employment equity but in good employment practices is something that we've all been very aware of, and I too wish to compliment you and to acknowledge that leadership. But we know that many employers are not as progressive as IBM and that you've had expertise within your human resource area that many employers may not have.

I guess the question that I have for you is, for an employer at the 50-employee range of size, from your

perspective, how much expertise will they have to have internally? What kind of costs do you think they would incur in attempting to do what is required under this legislation?

**Dr Ross:** That's a really difficult question for me to try and give a sensible answer to. I'm sure someone working with small businesses could give you that. There's any number of associations that work with them because they've obviously looked at it. That's a very awkward size of business. You're big enough to be big, but you're small enough to be small, and that has problems of all sorts of nature. I don't know, Kevin or Laurie, if you want to comment at all.

**Mrs Caplan:** I'm not asking for a definitive cost. When I say "cost," perhaps in numbers of employees or in purchasing the expertise from the outside. What we want to consider is what kind of expertise a company of that size would have to acquire to be able to implement legislation of this complexity.

**Dr Ross:** I think you'd have to take someone, probably initially full-time, and then later on part-time, who would be the interfacing—if you had an outside consultant helping you, setting up your own systems etc. There is an initial investment that is not small and it isn't small even for a large employer. So again, I would say it isn't something that is going to be easy. It's costly both in terms of time and energy and just straight dollars.

**Mrs Caplan:** Could you predict for us what you think will happen if your four recommended changes are not incorporated in this legislation, for IBM? These are very significant changes that you're recommending. What do you think will happen, not only for IBM, but thinking about the complexity for some of those other smaller employers impacted by this legislation if the changes are not made or if this legislation is imposed?

**Dr Ross:** Certainly the geographic one for us is very significant. It really would force us to describe our business and report on it in a way that is totally foreign to us.

I would make the same point, frankly, about the occupational codes. We didn't have time to talk about that today. That is very significant for the future. The occupational codes used today and the new ones coming out, the national ones, do not, to us, describe our workplace as we see it even today, and certainly into the future. Those groupings are not those that we would use for knowledge workers, and therefore we are certainly going to be working with the federal government also to encourage it to think about a major rethink on that also. It's very important.

**Mrs Caplan:** The last question I have on the rewording of the questionnaire, on number one: What would you recommend?

**Dr Ross:** We very much want all people to be able

to participate in some positive way, and that was the thrust behind it, because it is a really dreadful thing to ask a man to say no to being a woman. We're always looking for a win-win way to do things. So if you use the simple suggestion we've given you, it allows people simply to say, "Yes, I am a man," or, "I am a woman," and go on from there.

**Mrs Caplan:** I was struck by two points that you made.

**The Chair:** You'll have to be quick.

**Mrs Caplan:** One was that your human resource policies and your employment equity policies you believe should be good for everyone. I hope the government will listen. We have some real concerns as to whether or not this policy and the legislation that's before us—we don't believe it can be implemented in a way which will achieve the goals, particularly for smaller businesses in the 50 range. We think there will be great difficulty.

**The Chair:** You'll have to wind up.

**Mrs Caplan:** The last question I would ask is on the best-qualified-candidates approach within this legislation and within the experience that you've had. Is the education component the important one within your human resource experience?

**Dr Ross:** We look at a number of factors. Certainly, the educational background is an absolutely critical one. It is totally unproductive to bring someone into the business who doesn't have a hope of truly participating in a meaningful way.

**The Chair:** Thank you, Dr Ross and other members of IBM, for your participation.

#### DISABLED PEOPLE FOR EMPLOYMENT EQUITY

**The Chair:** Disabled People for Employment Equity, Eric Schryer. Eric, you have half an hour. Please begin any time.

**Mr Eric Schryer:** I'm Eric Schryer from Disabled People for Employment Equity. For short, we use DPEE. DPEE is a coalition with a membership comprised of consumer groups, agencies and individual consumers. Our mandate is to lobby for mandatory employment equity legislation; develop awareness for persons with disabilities so that they can see the potential and advantages of participating in the workforce and its economic rewards; educate employers, labour organizations and the general public on employment equity issues; and monitor compliance with and progress of employment equity initiatives and laws. We also do research into employment equity issues and publish resource materials. The results of our activities will have an impact on all persons with disabilities in Ontario, making up about 13% of the working age population.

I have a written brief and I did a summary of our concerns. What I'll do is read through the concerns to

get them on the record and I will concentrate on a number of them. The ones I will concentrate on will be on the issue of the interplay between human rights and employment equity, especially in the area of accommodation; the question of severe disability; the area of mandatory goals and timetables; and the availability of data to the general public.

First I'll read our summary of concerns.

(1) We take the position that much of what is left to regulations must be moved into the bill. We also call on the committee, within the context of considering Bill 79, to consider producing a report on the draft regulations.

(2) There must be an obligation on employers to put into effect a number of initiatives that will result in the workplaces of employers looking more like the communities in which they are located.

(3) Individual complaints should not be directed to the Employment Equity Commission. It should be a responsibility of the Human Rights Commission to investigate if an employment equity plan can be considered as part of a remedy or settlement. The individual should not have to end up in another lineup.

#### 1440

(4) When employers are asked to review their employment policies and practices—employment systems review, or ESR—this should be done with a mandatory checklist in hand that steps through the review in a comprehensive way. This should be in the bill.

(5) Positive measures which can be defined as employment equity initiatives that give temporary preferential treatment to designated group members to make up for the accumulated effect of past discrimination must be clearly defined in the bill. I'll return to that a little later on.

(6) The solution to the problem of distinguishing individual and systemic accommodation issues is, first, not to amend the Human Rights Code in subsection 51(3), and second, to have the employment equity plan deal with developing the infrastructure, policies, procedures and knowhow to deliver accommodations. This should be stated very clearly in section 11.

(7) In order to get any results through employment equity, it is essential to have mandatory numerical goals and timetables as a central feature of Bill 79. Numerical goals and timetables must be set by the Employment Equity Commission.

(8) In order for Bill 79 to cover all persons with disabilities as a designated group, it is absolutely essential that subsection 5(1) be amended to put an obligation on employers to hire persons with severe disabilities and persons with disabilities with severe disadvantages if the supports and employment services that are required by both the employer and the individual needing these supports are available in the community. The need for



special provisions for persons with severe disabilities should also be acknowledged in the preamble or principles section of Bill 79.

(9) There must be provisions in Bill 79 to make more workplace data available to the general public.

(10) The time lines for implementation of the legislation must be shortened, especially for smaller employers.

(11) Designated group members should make up the majority of the commission, the tribunal and their staffs, as in subsections 40(2), 40(4), 46(2) and 46(5). Representation should be equal for the four designated groups. The same should be said for the advisory councils to advise the commission set up by the Minister of Citizenship—subsections 45(1), 45(2) and 45(3).

(12) Our position is that the legislation should cover smaller employers and that there should not be any modified requirements.

(13) We think the review of the act and the regulations should be done not just once, after five years, but repeated every three years after that. That would be similar to the federal Employment Equity Act.

(14) Of the advisory councils referred to in section 45, one should specifically be established to do a continuous review of the act and regulations and make a presentation to the standing or select committee, to the Employment Equity Commissioner and the minister responsible for the legislation.

What I'd like to turn to now are some of the more specific issues that are very, very much of a concern to our community. One has to do with the area of accommodation. Actually, I'll start off with positive measures. I think that's a very interesting one that I've noticed in a lot of the development of the bill and also in a lot of our advocacy work: Many people do not understand what positive measures are.

I also notice that in the regulations—unfortunately, we have to bring the regulations into it in this context of looking at Bill 79—there is no mention of positive measures there. We believe that since there's an accumulated amount of, I'll just say, disadvantage because of past discrimination, it's very important that positive measures be a central part of the bill.

I'd also like to emphasize, for those who are bringing up the whole question about reverse discrimination and those other myths, that positive measures are temporary initiatives designed specifically to make up for past discrimination and only operate in a context of not having equality. I think this should be actually defined in the bill.

Also, it's interesting to note that where it all comes from actually, if you're familiar with equality rights, is subsections 15(1) and (2) of the Charter of Rights and Freedoms. That gives the justification for doing so and also states that it is a desirable thing to do so, and I

hope everybody's familiar with that. I really believe that employment equity is predicated on the Charter of Rights and Freedoms and on the Human Rights Code. In fact, employment equity is the application of human rights for a very specific purpose, meaning systemic discrimination, which leads me to my next topic, which is the area of accommodation.

In accommodation there is a real confusion in Bill 79 and in the regulations between the need for an individual person to be accommodated in the workplace, which right now according to the Human Rights Code has to be done, their duty to accommodate has to be done, unless the employer can prove undue hardship if they're doing so, and then the other issue of course is the systemic accommodation.

As you know, in the bill the Human Rights Code is being amended, which I think is a very tricky thing, a very dangerous thing to do. What will happen is that a lot of individual cases will still end up being shuttled over to the Employment Equity Commission, which is not really going to be equipped to deal with individual cases. I believe this comes from the whole idea that employers just want human rights to go away and let's get it all into one package here, which basically is just recreating the Human Rights Commission and its problems.

I think there's got to be a very clear distinction on accommodation, that all accommodation should be done according to the Human Rights Code, and there is reference to that in the regulations, but in the bill I believe that the amendment of the Human Rights Code should be removed and that the Human Rights Code should—in other words, what should happen is that if employment equity is done well, the human rights complaints, the individual complaints can be expected to diminish. If it's not done well, they'll keep coming.

Whereas on the employers' side it's complying to employment equity, they then should concentrate on putting together the infrastructure for delivering accommodations: the procedures, the funds, the knowhow, where to get it and so on, and that should be the business of employment equity. It's a systemic problem, and from that point of view, I think that's employment equity well done. I really want to make that clear distinction. There's been a lot of confusion about that.

The other major point of concern is the one about the availability of data, and we think that in any kind of monitoring it's very important that the community have available to it the basic workforce data. The way the bill's structured now, and also the regulations, there's very little availability of this. Third-party complaints are going to be very important in both giving employers the idea they'd better do their job and also for us to make sure that things are done, because you have to remember that more than half of our community is not in the workforce. Of the ones who are, many of them are

underemployed, in and out of the workforce. So there's a particular need to have strong enforcement.

Also, I'll bring in here the mandatory goals and timetables. If you look at any initiative in the past, all the voluntary initiatives, it just has not worked for our community. Just look at the Ontario public service and its annual report last year. The disabled community lost out by 12% in its representation between 1989 and 1992, and that's during an accelerated employment equity program or policy of a voluntary nature, and this is before the cutbacks even started.

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You can see that community is very strong on the need for mandatory goals and timetables, and these have to be set by the commission, because the way a tribunal operates, a tribunal in order to judge has to have something to judge on, and if you allow businesses to set their own goals and timetables, no judgement is possible. It's got to be done from the point of view of some kind of general timetable of change.

I think that covers most of my main concerns. Oh, yes, the last one was the one about severe disability. I think I'll cover that. According to section 5—and I have a real problem with that; that's the one that imports all the exceptions from the Human Rights Code—according to the act, if a person is not qualified or up to productive capacity etc, etc, it's okay not to hire a person with a disability.

We believe that basically our whole community should be covered. We think that should be amended to allow for special programs for persons with severe disabilities, where the kinds of supports that employers require in order to make up for the lack of productive capacity and the kinds of supports that the person with a disability needs, especially in the area where undue hardship can be proven, to give the opportunity to those people with severe disabilities who do want to work, and I've run into many who do—have an opportunity to do so. Other than that, most of them are just relegated to a life of poverty at this point.

I think that pretty well covers it.

**The Chair:** Only nine minutes left.

**Mr Schryer:** Maybe I should open up the questions now, because I think I've covered most of the major points.

**The Chair:** Very well. Mr Wiseman.

**Mr Wiseman:** I'd like to thank you for your presentation. I think you have, in contrast with some of the other presentations, with your presentation clearly outlined the problem we as a committee are about to face. We heard from Employment Excellence and we heard from BCEE this morning, and they don't want this bill. They want this bill completely eliminated, as does the opposition, which voted against it on second reading.

Now you've come and you've said that you want us to go beyond what is in this legislation. You want us to go beyond it, you want numerical goals, you want application and support staff, and you want all of these things to be included in this legislation of the employment equity bill. How do we reconcile these two positions that seem to be so far apart?

**Mr Schryer:** First of all, I think some of the stuff I've heard being said, and I wasn't here for all of it—for example, the fact that there isn't any discrimination, which I think is totally false. I've heard a lot of talk about merit but nothing about privilege. There are a lot of things being said and I truly believe that all the research, all the data, all the statistics point out that workplace discrimination is alive and well.

We now also know very clearly that systemic discrimination is much more pervasive, much more difficult to deal with. I really believe that a strong piece of legislation is going to be required to reverse this trend, because there's nothing as indicated in the reality of the day-to-day business world where there are any major changes, even where the market forces are in place. There are still many, many businesses, in fact the majority, that do not respond to the argument that the market will take care of things.

I think this bill is very well designed. It's a very flexible, ongoing way of removing these underlying causes for perpetuating discrimination, and it also will make the work of the Human Rights Commission much easier as time goes on.

**The Chair:** Mr Winninger, did you have a question?

**Mr Winninger:** Just a quick one if I may: You know that this act quite clearly calls for employers accommodating their special needs of disabled people in the designated group. I just wondered if you could comment on the exception that's provided for undue hardship and maybe share any experience you might have in that particular area. Are there special needs that can be accommodated only with undue hardship? Where do you think the undue hardship begins and ends?

**Mr Schryer:** As you know, the Human Rights Code says you have the duty to accommodate unless you can prove undue hardship, and undue hardship basically means that you'll go bankrupt if you do it. Bill 79 talks about all reasonable efforts, and that's applied to the employment equity plan. Unfortunately, the employment equity plan also includes reference to accommodation and we think there's an inconsistency there in the way the law is applied, especially human rights, considering that employment equity is an application of human rights.

Also, accommodation involves both things that can be done that will help future people with disabilities in coming to the workplace to be accommodated easier, but also it involves individual people. If I come in the



door right now and say, "I'm blind and I want a talking computer," I don't think any employer should make all reasonable efforts to put it on my desk three years later; that should be done now. But if the employer has done his job and he knows where to get the things, knows what it's about, knows about the problems, knows where to get the expertise, he'll say: "Yeah, we'll take care of it. Don't worry."

That's the kind of thing employment equity is made out of, that the employer is prepared to deal with the problems that come up. I really think that's where it has to be all clarified, in that area. Yes, it does mention accommodation, but accommodation is both an individual and a systemic problem, and it's confused at this point.

**Mr Curling:** I want to tell you that is an excellent presentation. The brief that you put before us is very concise. I also want to say that when the Business Consortium on Employment Equity group came before us, it brought forward a rather excellent presentation too. The talks that we have here as a committee are to look at all these and we don't shy away from the responsibility to assess both and find that we have good employment equity. I did not hear from them, as my other colleagues would say, that they don't want the bill.

I think we all want to have a good employment equity bill. That's what I want to address with you too. Would I be correct in saying that the employment equity bill before us has good intentions but is pretty weak? Would you agree with me?

**Mr Schryer:** Yes, I would agree with that.

**Mr Curling:** Would you agree with me if I say too that the regulations that are put forward seem to attempt to more or less put meat and more direction to this bill, that if some of those things in the regulations were in the bill that would have made a better bill?

**Mr Schryer:** Not necessarily. I think what happened, if you look at the regulations, is that it's an example of what you're allowed to do if the bill's too empty, too much of a framework, because I think there are some real problems with the regulations, and I think it's beyond the scope—

**Mr Curling:** I'm not saying to put everything in. I'm saying there are certain things.

**Mr Schryer:** Definitely. A good example is the one about the employment systems review. There could be a very well worked out, mandatory checklist which is partially put in the regulations. I think it's slightly incomplete, but it's good. If that was moved to the bill and an employer says, "Look, if you follow these steps and if you go through these—some of these things you may have done; some maybe not—you're guaranteed that at the end of that exercise things will go easier for you and for getting persons who are underrepresented

into the workforce."

**Mr Curling:** Your organization has been working very ardently in order to get certain bills and legislation in so that you could have access to work. Do you think there is some way this government could be convinced then that the regulations could be debated and maybe amended, a major amendment in putting that in the legislation itself?

**Mr Schryer:** You're asking whether—you think some of the—

**Mr Curling:** Because we can't debate it. One of the things is that we can't debate the regulations.

**Mr Schryer:** No, you can't debate the regulations, but one thing is that I believe it is within the power of this committee, legally, to make a decision, for example, to do a report on the regulations. I may be corrected on this, but that's my understanding. That's where I think it's difficult.

I also understand that if the bill is amended, it's like a cat chasing its tail. The regulations are going to have to be rewritten on the fly, so to speak. I understand that's going to be a problem, but I see the regulations as indicators of additional things that could go in the bill, and I don't agree with the way these indicators go, but the bill's got to be a bit more precise. The rules have to be much clearer for employers to work from, because whether employers agree or disagree with this bill, I'll make a bet that whatever happens at the end, we're going to have the rules very clearly set out so you know what to do. They can plan for it. It can be part of their business plans. If you have something that's very, very vague and too many regulations that can be changed too often, I think employers would probably find it very frustrating, and for us there would be no results.

**The Chair:** Thank you.

**Mr Curling:** This is so important, just one quick one.

**The Chair:** I know, but we need to move on.

**Mrs Witmer:** I hear you saying in your presentation that this legislation is not progressing as quickly as it should and that you'd like to see the time lines condensed, made shorter.

**Mr Schryer:** Yes. To explain that, we have been very aware of the problems of equality in employment since 1984-85 with the Abella report. I think the knowledge is very widespread. I believe we've had, what, close to 10 years to grapple with some of these problems, and various pieces of legislation have been in place to try to do that. There's the Police Services Act, there's the Employment Equity Act, there are various other large employers—the city of Toronto, Metro Toronto—that have done a lot of work. I believe, now that the problem is so well articulated and understood, that the time line, especially, for example, of three years for smaller businesses and then another three years to

complete the plan and another year for—when you include also the nine years for the workforce survey, complicated by the whole concept of self-identification, a lot of us are going to be retired before there's going to be any results, maybe even pushing up daisies.

**1500**

We've been waiting a long time, and you look at our community. There's still been very, very little change in our community as far as getting into the workplace is concerned. All I get is call after call after call from persons with disabilities, it doesn't matter if they're severe, mild, moderate, whatever way you want to cut it, and they say: "I want a job. It doesn't matter if the economy is up or down, I still can't get a job." I think the economy really shouldn't come into it, because it will come up again.

**Mrs Witmer:** What are the barriers that your group is facing right now? What are the main things holding you back from gaining employment?

**Mr Schryer:** I would say they come in a number of categories. The first one is discriminatory attitudes; that's a very strong one. When I say that, to put it in a frame, I mean there's a lot of attitudes we have about the capabilities of people with disabilities that are very skewed; that's a very difficult area, because culturally things we're used to thinking of as very positive have a negative impact on our community, such as the concept of charity and some of these other things.

The other one is some of the areas in training, education and how to get to work; for a number of our members it's difficult to get to work. There's also the area of accommodation. We're still waiting for the present government to put the guidelines to accommodation into regulations for the Human Rights Code. It still hasn't happened, and as a result the Human Rights Commission just hasn't been operating too well in this area.

I could go on and on. There's a lot of barriers, a lot of fears, people have fears. It depends also on—there's many different types of disabilities. The psychiatrically disabled community has its concerns. The developmentally disabled community has its concerns. There's a whole range of concerns around that.

But I would say the attitudinal barriers, access and accommodation are the three main areas, among many, and also in some of the areas I mentioned before, in the limitations of productive capacity. Somebody may be very qualified and competent at doing something but can't do as much as or can't do it in the same time as somebody else. Why should they be excluded from the workforce?

There's a whole range, and I think our community has some of the most complex problems in barrier identification and removal.

**The Chair:** One final question. Mr Tilson, do you

want to ask a question?

**Mr Tilson:** I'd like you to elaborate somewhat on the issue of positive measures. I heard you make your presentation, and I'm reading it, where you talk of the act defining "temporary preferential treatment." What is temporary preferential treatment, how do you arrive at it and how long does it last?

**Mr Schryer:** I emphasized temporary because it's only supposed to last in order to make up for a reasonable portion of the accumulated disadvantage. In other words, if you started right now and only treated everybody equally—and this is an argument you hear a lot, both in the media and a lot of employers have come up with this—yes, there will be some change, but how do you make up for the accumulated effect of being treated at a disadvantage or giving other people privilege in employment?

I won't read it because it takes a bit of time, but if you go to the equality rights clause in the Charter of Rights and Freedoms, it explains it very well; I think that's a very nice piece of legislation. It says it is desirable to have programs that ameliorate disadvantage of persons who are discriminated against.

I'm a firm believer that yes, we start from square one and make it a level playing field, but we also have to, especially for those who have been very thoroughly excluded from the workforce, make up for some of this past discrimination. This could also be very nicely applied to things like seniority rights where you don't want to dismantle something at all, and we have a strong belief that that was originally also an equity initiative.

Sometimes you have to do something temporary. And we have to admit to ourselves that there is preferential treatment in this; we can't get away from that. I just think preferential treatment has been dealt with in such a negative way. I don't think people understand the concept of making up for past discrimination.

**Mr Tilson:** How long would it last?

**The Chair:** Sorry, Mr Tilson. Mr Schryer, we've run out of time. It was very informative. Thank you very much for coming and presenting your brief to us today.

BRUCE RYDER

**The Chair:** Professor Bruce Ryder, welcome. You have half an hour. Please begin any time you're ready.

**Mr Bruce Ryder:** Thank you, Mr Chair. I'd like to commend the committee for I think setting a very good example in meeting its own goals and timetables.

My name is Bruce Ryder, by the way. I'm an associate professor at Osgoode Hall Law School at York University. I specialize in my teaching and research on human rights issues and I've also been active at the law school and across the York campus as a whole in designing and implementing our own employment equity plans.



I apologize to the committee. I haven't been able to prepare a written brief today, although I hope to prepare comments on both the act and the regulations prior to the deadline in October.

I'm here today speaking in a personal capacity as a person interested and committed to these issues and to speak in support of the bill. I fully support the objectives of the act; namely, to overcome barriers to equal participation in employment, to promote workplace systems and environments that are responsive to the diversity of Ontario's workforce and to maximize the potential of all of our human resources. I think these are objectives we all share.

I also fully support the implementation of employment equity through compulsory legislation. I believe Bill 79 is a very useful initiative, a very creative and forward-looking response to this problem. I don't think there is much doubt that our current legal structure has proven inadequate in removing barriers to equality in employment; of course, by "our current legal structure" I mean a system of voluntary compliance coupled with employee access to complaints mechanisms through courts or tribunals.

That type of system, voluntary compliance coupled with a complaints-based process, has simply proven inadequate to remedy systemic barriers. I think the basic principle we're operating on here is that the systemic barriers require systemic remedies. It's from that point of view that I evaluate Bill 79, from the point of view of whether it adds something to what we already have; that is, does it provide effective systemic remedies that go beyond the current complaints-based mechanism? I intend my comments to be constructive, but I do think there are major flaws in the current bill when approached from that point of view; that is, does it provide effective systemic remedies?

I also have concerns, as I'm sure most employers and most employees do, with the administrative burden that the act will impose. I don't intend to focus my comments on that issue today except to note that at York University, for example, we have just—and many other employers in the province may well be in this situation as well—completed a compliance review under the federal contractors' program. It's very important to us at the university that an attempt be made, as much as possible, to not duplicate the efforts we've made in that process under this legislation. I think the regulations have gone some distance in ensuring that this will not occur, but I think there are still some efforts we can make in that direction to make it clear to employers in our situation to what extent we have to redo surveys and reviews of employment systems and so on.

Also, from the point of view of administrative burden, one thing that stuck out to me in the regulations is the requirement that surveys be reconducted after nine years, something that seemed to be inappropriate, given

that there's an obligation of undertaking a survey and keeping it up to date. If that is done, I think the requirement that it be done all over again after nine years is unnecessary.

Anyway, I don't want to focus on the questions of administrative burden, although they are very important for everybody. I want to focus my comments today on what I perceive to be a lack of adequate mechanisms in the act for ensuring compliance with its obligations, that is, for ensuring the accomplishment of its objectives.

#### 1510

I firmly believe that without strong and reliable standard-setting and compliance mechanisms, this legislation risks doing more harm than good. The good that will come even with weak legislation is that there'll be some symbolic support for the principle of employment equity; there will be some heightening of consciousness, presumably, about the scope of existing inequities in the workplace, and that in itself is of some value. But changes in awareness will not necessarily lead to real change for the designated groups, and I'm concerned that harm will come from weak legislation, obviously in the sense that it will fail to quickly address the burden imposed on designated groups and to quickly take advantage of all that Ontario's workforce has to offer.

As the Employment Equity Commissioner put it in her Opening Doors report, the need for employment equity is urgent, and urgency means that there can be no equivocation with respect to the kinds of progress that the act demands. Weak legislation will also lead to a great waste of administrative resources. My familiarity with the requirements of the federal contractors' program makes me well aware of the substantial resources that need to be devoted to the implementation of employment equity and the development of plans by employee groups, by employers and by members of designated groups, who ought to be included in the process of developing employment equity plans.

There's a potential for a great waste of administrative resources here, and that of course hurts everybody if the legislation is not effective. Furthermore, I think weak legislation risks maintaining rather than eradicating employment inequities by creating the illusion that efforts towards real change are being made.

Those are my major concerns, that there's a possibility this legislation could just paper over the problems we're seeking to address, and I think that's something this committee ought to take very, very seriously. I fear that in its current form Bill 79 and the accompanying draft regulation may indeed be weak legislation.

I want to focus on what I see to be three interrelated problems with the means of ensuring compliance with the obligations in the act. Those three problems are: first of all, the lack of standards, or what I see to be a lack of standards, for determining when obligations are

or have been fulfilled; secondly, the lack of adequate mechanisms for ensuring accountability; and finally, what I see to be a lack of adequate penalties.

My comments are fairly specific in focus. What I haven't addressed is that there's much in the legislation that I think is very good, but there are these specific problems that I think may seriously undermine what we're, hopefully, seeking to accomplish here.

Those three interrelated problems may make it far too easy for an employer and/or employees to simply go through the motions in complying with the act's part III obligations without any real commitment to change. As I mentioned, I think that could be a serious waste of time and effort for everybody concerned.

Let me go through briefly what I see to be the three interrelated problems.

First of all, the lack of standards for determining when obligations have been met: The part III obligations, I think the most important part of the act, tell employers what they have to do but not whether they have to do it well or effectively. For example, section 11 specifies the components of an employment equity plan but makes no attempt to ensure that a plan reflects commitment to attaining speedy change. Section 12 says that an employer must take all reasonable efforts to implement a plan, but nowhere defines what all reasonable efforts entail.

The current draft regulation doesn't remedy these problems but reproduces the same approach in greater detail and with further qualifications on an employer's obligations. That same approach is essentially a checklist of things that have to be done. What I see missing is any kind of emphasis on quality control. I think there's a real risk here that what we're doing essentially is asking employers to build a vehicle without imposing any requirement that it's actually going to be capable of going anywhere.

Section 23 of the regulations states that numerical goals and presumably timetables, although they're nowhere mentioned, must constitute reasonable progress toward achieving a representative workforce and must be reasonably achievable by working in good faith. Again, there's no specification of what "reasonable progress" means, not even an enumeration of factors to be considered in deciding whether an employer's targets are in fact reasonable.

So I feel quite strongly that we need clear standards for what are reasonable targets, what are reasonable goals and timetables, both in terms of the percentage of employees and the rate of change. We need some guidance on what is reasonable in the context of numbers and timetables.

I'm sure there has been much discussion of this in the submissions to the committee, and I don't want to deny that the need for ascertainable and meaningful standards

must be balanced with the need for some flexibility to accommodate unforeseen developments, to accommodate the diversity of workplaces covered by the act, but at the moment it seems to me that the bill leans much too far in the direction of flexibility and has essentially abdicated any standard-setting function.

The second concern I wanted to raise is the weaknesses in the accountability in terms of the content of the plan and progress in implementation. Accountability, I think, can be divided into the provisions that deal with consultation and the provisions that deal with information. As far as consultation is concerned, I think the provisions for joint participation of unionized employees in consultation with non-unionized employees are valuable and to be commended. Indeed, those provisions mirror essentially what has happened at least in our workplace under the federal contractors' program, although it's not required under the act. It just makes a lot of sense.

However, in terms of consultation, I see a major flaw in the current act in that it doesn't require consultation with the designated groups, whether within or outside of the workforce. The regulations do mention, in subsections 35(2) and 35(3), that the employer should consult with employees who are members of designated groups and also direct the employer to receive information from the commission in the absence of employee representation from those designated groups, but I don't think that's enough. The principles of employment equity require that members of designated groups be given a greater opportunity to help identify problems and design solutions that after all are supposed to improve their position.

One way of going about that, for example, which I think could be done quite easily, would be to amend the act to include a provision—this is one idea—stating, for example, that consultation with and some acceptance of the recommendations of members of designated groups is a factor that ought to lean towards the conclusion that an employer has complied with the obligations under the act. Something like that could be quite simply added to the act. I found it quite startling that there was no provision for consultation with designated groups in formulating and implementing plans.

The other aspect of accountability is the information requirements in the act. The act contains some provisions relevant to the provision of information to employees and to the commission, but again I don't think it goes far enough. Section 16, for example, requires employers to post information on the act, as is required in the regs. There's no requirement to post a plan. The current regulations only require posting of a summary of the plan and accessibility to reports prepared under the act. Thus, even in the regulations there's no guarantee of employee access to the plan itself.



The bill at the moment inexplicably, in my view anyway, only requires that a certificate be filed under the act, subsection 11(2). The commission has the discretion to ask that a plan be filed under subsection 11(3). Then of course there would be reports that will be submitted in accordance with the regulations under section 18.

So in sum, the bill contains no guarantee that the commission will have access to information that will enable it to effectively monitor employers' performance in meeting the act's obligations as a matter of course. Again, I think a very simple amendment could be put in place. I would suggest that the bill be amended to require the filing of a plan with the commission and a posting of the plan in the workplace in the manner that the regulations currently require that a summary of the plan be posted. I don't understand why the bill currently doesn't have such a simple requirement and a basic one in terms of accountability.

The third problem I wanted to briefly speak to is the lack of adequate penalties for non-compliance. There are strengths and weaknesses in the bill, again, and I'm just going to focus on what I see to be the weaknesses. My concern is that apart from the contract compliance provision in section 49 there are no penalties in the act that follow immediately from a failure to comply with the part III obligations. If there was a requirement in the act that plans be filed with the commission and there were clearer standards set in the act by the commission, then the commission could be empowered to immediately issue orders and impose penalties for non-compliance upon receipt of deficient plans. There's no such provision at the moment and I believe the bill could be strengthened immeasurably by such a provision.

1520

At the moment, compliance orders can be imposed, of course, after an audit by the commission. The failure to comply with an order can give rise to a penalty under section 38, and applications can be made to the tribunal, also giving rise to a compliance order under section 33 that can give rise to a section 38 penalty.

There are a couple of problems that I want to point to. First of all, the commission's ability to issue orders under section 24 again in my view inexplicably omits section 12 of the act, which means that the commission lacks the power to issue a compliance order for failure to properly implement an employment equity plan. Section 12 is the section that deals with implementation. Why that crucial section was omitted from section 24, I have no idea.

The larger question to be addressed here, however, is, does this system of compliance orders move beyond, as I said, what ought to be the bottom line here in terms of designing effective employment equity legislation? Does it move beyond a complaints-based system to one that can implement systemic remedies?

That question requires that we consider whether the presumably random audit power that the commission has, coupled with the ability to initiate hearings before the tribunal, effectively creates an incentive for all employers to comply with the act. Those who have entered or are interested in entering into contracts with the government probably have adequate incentives, but what about other employers? They'll only be subject to compliance orders if they're caught out by an audit or by a complaint. We have these problems I've already identified in terms of information provision.

There are very limited incentives here for complying earlier and effectively. The ability of the commission to issue binding compliance orders that go beyond the mere fact of undertaking a survey, the preparation of a plan etc, to actual commitment and progress is crucial, in my view. Otherwise, we're left essentially with the complaints-based structure, applications to the tribunal, that will reproduce many of the deficiencies of the legal status quo.

To summarize the penalties sections of the bill, it seems to me that it gives adequate powers to both the commission and the tribunal to force the most recalcitrant employers to undertake the basic steps required by the act; that is, do your survey, review your employment systems, come up with some sort of plan. I think the powers in the act are adequate for those purposes. But in my view it gives inadequate powers to the commission to in a more systematic way remove what is certain to be the much more widespread problem of employers simply going through the motions, papering over the problem without really changing it. Many plans produced under this act, in my view, may turn out to be just window dressing.

**The Chair:** Mr Ryder, just to point out, there are only 12 minutes left, which would leave four minutes to each caucus.

**Mr Ryder:** Okay, I'll just wrap up. For the reasons that I've described, I would urge the committee to make recommendations that would ensure that the act's obligations are backed up by more carefully defined standards, methods of accountability and sanctions that together will better and more rapidly ensure that employers make the promise of equality in employment real. Otherwise, I'm afraid the legislation could turn out to be a paper tiger, and a costly one at that.

**The Chair:** Thank you. Mr Winninger, four minutes.

**Mr Winninger:** I thought you made your arguments quite clearly and forcefully and I'm looking forward to receiving them in written form. In the meantime, though, I'd like to deal with some of your points around standards, around accountability and around penalties, if there's time. I know there may be other people with questions.

First of all, on the matter of standards, you seem to

appreciate that the need for clear, binding standards has to be counterbalanced against flexibility and diversity in workplaces. We think at this point in time, I believe, that we've reached the appropriate balance. Clearly, you don't and you'd like to see us move towards more binding standards perhaps. Is that true?

**Mr Ryder:** I'm not sure whether it's more or less binding, but certainly more clearly defined I would like to see. I don't see much attempt to define standards in the act itself. It states general principles, but there isn't much in the act—there's a little bit more in the regulations—about what would constitute, for example, reasonable progress. I'm not sure there's much at all in either the act or the regulations that can help us sort of flesh out what is reasonable progress.

I'm not saying define it in a way that holds people to rigid timetables and rigid goals; I'm just saying we need to have some context to ascertain what is reasonable. How is the tribunal going to decide? What sort of factors should it look at? I think we can have much more.

**Mr Winninger:** The term "reasonable" is almost a term of art in some legislation, and as a lawyer you will appreciate that.

**Mr Ryder:** It's a lawyer's copout most of the time.

**Mr Winninger:** A lot of the case law deals with what "reasonable" means. I know time is short, so I'd just like to move on to—

**Mr Ryder:** I think it would be very easy, for example, to have a list of criteria saying, for example, "In deciding whether an employer's plan does indeed constitute reasonable progress towards reasonable goals, the tribunal or the commission will consider the following factors: How quickly is this closing the gap? Are there"—

**Mr Winninger:** Maybe you could present some criteria in your written submission.

**Mr Ryder:** Yes.

**Mr Winninger:** On the issue of accountability, which I'd like to get to as well, you mention that there's no vehicle, as you saw it, for the advice of the designated groups to be communicated to the minister. I would just point out—and you're probably familiar with section 45, which provides for the establishment of advisory committees, including representatives of the designated groups to advise the commission.

**Mr Ryder:** Right. No, I didn't mean to address input by advisory groups directly to the commission, but rather input by members of the designated groups directly to employers and employees engaged in the production of plans for their particular workplace. On that point, there's nothing in the act, although there is some provision in the regulations, but I believe the act could incorporate some commitment towards consultation with and serious attention to the input of designated

groups in the formulation of plans. It's obvious, certainly in my experience, that we've benefited enormously from that type of consultation.

**Mr Winninger:** Lastly then, if you feel that the quality review built into the statute is inadequate, and I would point out that the quality review would flow from the audit functions of the commission and also from the kind of supervisory authority of the tribunal, if there are mechanisms that you can suggest that would provide a more solid foundation for quality review, I would suggest you put them in your written submission to us.

**Mr Ryder:** I think some of the mechanisms that are in the act are very good. My main suggestion, and I will write it up, is if there was slightly more precision, or maybe much more precision, in the definition of standards and there was a requirement that plans be filed with the commission, if those two changes were made, it would be very easy for the commission to issue orders requiring better-quality plans without going through extensive audits or hearings before the tribunal. That would lead to a much broader ability to achieve systemic change as opposed to piecemeal change, which is what we're trying to move beyond here. Right?

The problem with audits and tribunal hearings is that there's going to be a limited capacity to undertake many of them at once. We all know the kinds of backlogs, for example, that other tribunals have experienced. So a streamlined procedure for ensuring quality review would be extremely desirable.

**Mr Curling:** Professor Ryder, you have articulated exactly some of the concerns that I have raised about weak legislation and what it leads to, because as you said, it's a matter of waste of resources and sometimes really to create this illusion that something is happening and when it gets down to it, nothing happens. What we have is more chaos in our society than anything else.

Because of the limited time too, I'm just going to ask you to comment if you have looked very much at the Human Rights Commission, which actually deals with much of the discrimination or which should be dealing with all discrimination. It seems to me employment equity wants to be a kind of kissing cousin that comes in and would like to do some of that kind of work itself.

Do you want to comment really on what could be done with the Human Rights Commission in order to make maybe this Employment Equity Act a bit more effective, or do you see it playing any role at all in supporting this bill, or what should be done?

1530

**Mr Ryder:** I think that's an interesting question. I can't say I've given it a great deal of thought myself at this point, but I think it's clear that there ought to be a close relationship between the two tribunals, certainly the commission and the tribunal under the Employment Equity Act, and the Human Rights Commission. I think



that will develop quite spontaneously and naturally. I don't see that there is likely to be any conflict, for example, in the objectives and missions of the two tribunals. They will complement each other. I think there have been some submissions about ways in which the provisions of the two acts could be better integrated. But sharing of information and strategies, it seems to me that's the sort of thing that will evolve, hopefully, when this act gets passed.

**Mr Curling:** Let me ask you then, in this respect, because I presume—as I heard you, it seemed to me you're following through this act, through this process, step by step. How long do you think it will take an individual who had a complaint against the employment equity plan within a company, considering that this will not come into effect in another three years anyhow, it depends on the company, how long would it take from that time, you feel—did you see anything in the act that tells you a time when the commissioner would be dealing with this and when the tribunal would be dealing with this, and then it may become a Human Rights Commission case? Because you said, "I'm telling you, it has to be entwined," because they could maybe prove that the company has done reasonable efforts and all those things and then say: "They have done their thing. I don't see any evidence. Take it back to the Human Rights."

Have you followed it through in that way to say that it does not, as you would put it, give people the illusion that change is happening, and this individual comes before the commission now and makes a complaint? How long do you see it would take a normal complaint to be resolved? Have you followed that through?

**Mr Ryder:** I'm not sure how long it will take. Are there provisions in the act that set out specific time frames? I don't believe so, or at least—

**Mr Curling:** I think you've answered my point, then, that there seems to be no time frame.

**Mr Ryder:** But I think it's important to keep in mind that the Human Rights Code and the Employment Equity Act will be dealing with different kinds of complaints, interrelated complaints. But under the Human Rights Code, largely what we'll have are complaints of discrimination against individuals and what will be taking place under the Employment Equity Act will be complaints that an employer has failed to in some way produce this process and start implementing this process for systemic change. It's possible, of course, that the same employee could be aggrieved under both acts, but I don't foresee there being any real problems in terms of integrating the operation of the two.

**Mr Curling:** I hope the complainant knows that or can complain when he comes before either the commission or the Human Rights.

**The Chair:** We have two speakers: Ms Witmer first,

and then Mr Tilson.

**Mrs Witmer:** It's regrettable that we didn't have your presentation, because I think there's a lot of information, but unfortunately we didn't have a chance to prepare ourselves very well.

**Mr Ryder:** I didn't have a chance to prepare myself very well.

**Mrs Witmer:** No. What the government is attempting to do, and it repeatedly tells us, is to make the access to employment fair and equitable. What you're suggesting certainly would, I think, add some rigidity to the system. I think there would be less flexibility. Would you agree? We hear constantly about regulations in this province suffocating new investment. We hear about bureaucratic red tape. I guess what I hear you talking about is more regulation, more red tape. What incentive, then, is there for anybody to create new employment opportunities?

**Mr Ryder:** I don't think I'm suggesting that there be new red tape. I'm just suggesting that given the new administrative procedures that this act is proposing to implement—and I do support them; call it red tape if you like—that this red tape be capable of accomplishing something meaningful.

I'm not proposing additional red tape; I'm just proposing that the administrative burden employers and employees have to take on have real benefits for us all in terms of achieving the goals of employment equity.

I think I would put it as more as proposing that this legislation have a little more bite. I think you're right to say that I would characterize my submission as being more rigid because I see the act now, in seeking to balance the competing concerns that you've heard from people through the course of the development of this legislation and through the consultation process—I think the balance has been struck too far towards flexibility and too far away from what you'd characterize as rigidity and which I would characterize as effectiveness.

**Mr Tilson:** I appreciate your comments to Mr Curling specifically. It's an issue that I raised yesterday and which seems to be discussed more and more, and that is the issue of comparing the Human Rights Commission and the Employment Equity Commission.

Yes, I understand that one is for an individual and one may be for a group, although it could be for an individual as well. I guess you look at the cost that's being put forward in the estimates for the Employment Equity Commission alone as being \$6 million at a time when we've got social contract and people having their wages frozen and all this sort of business.

If it's possible to amalgamate the two groups—I'd like to hear people who have looked at this or who have had some experience with the Human Rights Commission. You haven't said, but I gather the way you're talking, you've had some experience or at least observed

them. Whether that is possible notwithstanding the fact that it is—and I understand that basically for an individual, because that's a lot of money.

**Mr Ryder:** It certainly would be possible to accomplish the goals of this legislation giving the Human Rights Commission a mandate to deal with individual complaints of discrimination under the Human Rights Code and a mandate to perform the role or roles similar to that performed by the commission or the tribunal in this legislation.

**Mr Tilson:** Particularly when it's being alleged that they can't do their job now, I suppose.

**Mr Ryder:** Yes, but I'm sure the two bodies will be closely interrelated in practice. The Human Rights Commission, as we all know, has an enormous burden as it is. It has a huge backlog of cases. People have been dissatisfied with its performance. It wouldn't be feasible to add these responsibilities to the Human Rights Commission without substantially augmenting the resources and the capacities of that body as it now is, and I'm not sure the cost would be so significantly different.

The kinds of new tasks this legislation requires seem to me to fully justify the creation of a new body.

**The Chair:** Mr Tilson, I'm sorry, we don't have enough time. Professor Ryder, thank you for your presentation. I think we all found it very informative.

ROD McCALLUM

**The Chair:** The next presenter is Rod McCallum. Welcome, Mr McCallum. You have half an hour for your presentation. Please begin any time.

*Interjections.*

**The Chair:** We had Professor Ryder before. That's today's agenda.

**Mr Rod McCallum:** My name is Rod McCallum. I'm a resident of Toronto. I'm here as a disabled person and my circumstances are rather unusual; I think some of you may find them horrifying. I have a number of extremely serious allegations to make against this government, against Metro police, against another police force and so on.

Now, I have comments in particular on the legislation in terms of how I may be helped to get back to work. I would like to make my comments about my situation in terms of how the legislation may or may not help me, and I have great doubts that there is anything in this bill to help me.

**The Chair:** Mr McCallum, can I ask you, do you have a case and is it in the courts by any chance?

**Mr McCallum:** Not against the people I'm talking about. There are two court cases pending, but it doesn't involve Metro police; it doesn't involve the people I'm talking about.

**The Chair:** Okay. Let's proceed, please.

1540

**Mr McCallum:** First of all, I'll make some general comments on the legislation as it's been proposed. I do object to the fact that women are to be regarded in this. I think it is sexist. I think it is really inequitable to have women treated as a class that will receive preferential treatment, and that's all I'm going to say about that.

The legislation does not appear to address the issue of individual cases, and I think that's fundamentally important. I come here as a man who—even with all your combined efforts you may have a great struggle on your hands to get me back to work. Even though I'm very capable—I have great credentials, I have excellent job references—I can't find a job. I'll get into the issues of that in a moment.

I believe the penalties of \$50,000 that are quoted in this legislation are insignificant in terms of the types of employers you may encounter who will just laugh at that. My last employer was IBM Canada Ltd. IBM, worldwide, has something like 300,000 employees. It's a multinational giant. If you say, "We're going to slap you with a \$50,000 fine," they will laugh. It would be worth their while to simply pay it and forget about re-employing someone like me. I was fired without just cause. I won't get into all the details, but it's really, I think, an interesting story of just what transpired to cause me to be fired.

I think a penalty of \$50,000 per day for every day that a company like IBM was in defiance of a tribunal finding or order would be appropriate.

In section 5 of Bill 79, first are some what I would call loopholes which may permit the parties that are involved in my particular case to avoid penalties, to avoid an investigation. For example, IBM could say that I have a handicap, and that's true. I have been handicapped by external forces, by others, but I don't come here as a person in a wheelchair. I don't come here as a person with a significant disability that could be overcome. I have been accepted now by the Ontario government as a disabled person. I suffer from severe and chronic depression.

That depression has been caused by mistreatment by others, specifically the Metro Toronto police; the Victoria police in British Columbia; the manner in which the Canadian Police Information Centre computer system is being run—that has been used to smear me; mistreatment by six different ministries of this government—that includes the Ministry of the Attorney General, the Ministry of the Solicitor General, the Ministry of Correctional Services, the Ministry of Health, the Ministry of Community and Social Services and the Ministry of Labour. I've had problems with all of them.

Finally, I had to say to a doctor, "I can't deal with this any more," and he has said that I am officially a disabled person due to chronic depression. Depression



does not affect my rationality. I am full of anger, I am full of bitterness and at times I am full of rage, but it does not affect my rationality. I can explain what has happened to me. I am telling you that this notion of a handicap where IBM could say, "This man is handicapped by these external forces" is not sufficient. That loophole has to be taken out. No one should have to face an accusation that he is handicapped by forces beyond his control. Whatever barriers exist should be knocked out.

Special employment, that could be used by IBM to say: "Well, we have an issue of confidentiality here. We deal with a lot of confidential information. We can't have someone who's a security risk." I have been accused of being a security risk. This has never been put in writing; it hasn't come from IBM. People have made a number of allegations against me. I've been accused of being a drunk; I've been accused of being mentally ill.

CPIC currently states that I am violent and dangerous and anti-police. I complained to the BC police commission about the term "police hater." That was removed. Now someone has put "anti-police" back in. According to a senior detective—in fact the man who is in charge of detectives at Metro police—the term "anti-police" is substantially different from "police hater," and I do not agree with that.

I don't see that I could ever get back to work until these issues are addressed and somebody looks into why I'm declared a violent person when I have never hurt anyone or attempted to hurt anyone in my entire life and I have never been convicted of any offence involving violence. I fail to understand why I'm considered to be dangerous. It used to say "mentally unstable." That has been removed.

I do not know who has put this in. I know a lot of the people involved, but these are anonymous people moving around in the dark and I don't know who exactly has been doing this. I don't know the people who have actually entered the information or ordered that the information be entered.

These loopholes have to be closed. No employer like IBM should be able to say: "This is special employment. We have security concerns, and we can't have a man who is constantly in trouble with the police."

I have now been subjected to eight false arrests since 1988. I have been arrested and arrested and arrested and arrested. Of the last four arrests since I moved to Toronto to try and get back to work, I have not been convicted of anything in relation to those four arrests. In three cases I did not receive a trial. In one case I did receive a trial and the judge threw out the charge.

I have great concerns about subsection 6(4), which specifically excludes the police forces and excludes them from obligations and enforcement.

In order to find out what has happened to me, there's going to have to be an investigation, if there is some willingness to help me get back to work, but that means you have to accumulate all this information. I can't even accumulate it. They have files about me I can't even get my hands on. This matter has gone as high as Susan Eng. She has requested the chief of police to conduct an investigation. It's been handed to Staff Superintendent Dick. He has conducted an investigation. I can't see the results of the investigation. Everything has been hidden. It's considered confidential even though it concerns me.

How the tribunal would lay its hands on any information concerning my predicament when subsection 6(4) specifically excludes the police from enforcement—they could not be fined for failing to turn over documents. I think that should be addressed.

I find it in general highly objectionable that there is now apparently a group within the government that is prepared to assist me to get back to work—I think that's the function of the Employment Equity Act, or the tribunal or commission—but that the wheels will only start to turn once I'm disabled. I fail to understand why I've been allowed to be disabled through five years of constant harassment and mistreatment.

I've been brutalized. Last summer I was beaten severely by Metro police. The year before that they put me out of work. I was not able to work at all in 1990 in Victoria, BC, due to police harassment. I was not able to work last year due to police harassment. I've had my tire flattened, I've had my car rammed, I've been kidnapped off the street and beaten, I have been kidnapped from my home. I don't think any one of you in this room would like to undergo the sort of treatment I have undergone.

When I finished university—I attended the University of British Columbia—I went to work for five years for the federal government. I worked in the field of earth physics, because my background at university was physics. After that I worked for five years for the provincial government in BC as a contract computer programmer. I've worked for Dome Petroleum. I was last employed, as I said, for IBM. Yet Metro police seem to consider me to be "a nut, a monkey and a flake."

I would like to think that an act would have teeth sufficient to fully investigate any situation where an innocent person was put out of work, particularly when it occurred through criminal acts of those who are supposed to enforce the law.

I have complained and complained and complained about this matter until I am blue in the face, and this is the first opportunity where I have had the chance to sit before a group of MPPs. I'm really appreciative of that and I thank you for bringing me here today to talk about my situation.

1550

It is difficult to understand, because the scope of it is now enormous. I want many police officers charged with criminal offences. I want police officers in British Columbia charged, I want police officers in this city charged and I want people within this government charged. I want to know why this was done and I want the mechanism by which it has been accomplished dealt with so that this can never be done to anyone else again.

When I lost my job with IBM, Metro police saw fit to cause me to be imprisoned for a period of 35 days, following which I did not receive a trial. The charge against me was withdrawn. There was a case in the *Toronto Star* recently of a man who was charged with attempted murder. He was kept in jail for seven days, and this was a big thing. The paper reported on it. I took my story to the *Toronto Star* and they did not seem to think that it was worth dealing with, because, in the words of the reporter, I was the author of my own misfortune.

I was charged with simple common assault in which no injury to anyone was alleged. Someone simply lied to the police. That is one of the lawsuits that is currently pending. That person is facing a claim of \$200,000 now for what they have done, simple common assault. I had a job, I had a set place of residence in Scarborough. I was kept in jail for 35 days and then, on the day I was assigned to have a trial, they withdrew the charge. I lost my home, I lost my job and, following that, as I say, I'd been arrested three more times and in no case convicted of anything, with the exception of my beating. I was convicted of my beating. In other words, a police officer punched me in the face last year so hard that he broke his hand and I was convicted of assaulting him. That is currently under appeal. Following my punch in the face when I was down on the floor, I was repeatedly stomped and kicked. These are not minor things that have gotten me depressed; they're major things: being put out of work, receiving a beating and so on.

You will not find me in support of this legislation unless the legislation deals with my case. I think my case is one of the most difficult cases that you could put the equity act against and try to resolve it, because you will have obstruction by Metro police, you'll have obstruction by Victoria police. I have struggled for five years to clean this mess up and I can't do it. That's why I finally had to say, "Look, I can't work, not under these conditions." I've been put out of work three times; I've been injured by the police three times.

This will haunt me for the rest of my life until somebody deals with it. The penalties must be boosted to what to some people might seem an exorbitant sum, but it will get the attention of IBM and will get the attention of Metro police. That loophole where the

police can avoid investigation must be closed. We must have no barriers in terms of investigating why a person is out of work. Who has caused this to happen?

**The Chair:** Mr McCallum, there are 10 minutes left, if you'd like to—

**Mr McCallum:** Yes, I'll take questions.

**Mr Curling:** I really don't have any questions. I'll make some comment, Mr McCallum. I was trying to find how this bill will help you or whether this bill has relevance to your case. Of course I can understand your emotion, that you have to have some place to express the frustration and the turmoil you've gone through.

I'm not quite sure if Bill 79 would deal with your case specifically. The individual before you made a comment, as you know, that Bill 79 seemed to do with corporate or larger-scale firms in terms of employment equity, and Human Rights and the other institutions deal with specific cases. I'm not quite sure if this bill will address the concern you raise.

All I will say is that I hope your case, which is, as you said, before the courts in some respect, not in that specific one you stated, will have the redress it has. I'm not just quite sure: What is it that I or this committee can do about your case?

**Mr McCallum:** To say that you're going to have an Employment Equity Act and then you find the case of an innocent person who has been put out of work due to external factors and put in a circumstance where you can't really expect an employer to hire a violent, mentally unstable drunk, as I have been described by the police—that's really a joke if you have an act like that. There's no employment equity there for me, yet I've been classed as disabled by the government. I've been accepted. I receive a cheque every month from family benefits. I don't see the point.

The second point I would like to make on your remark is that this is not before the courts. I struggled for two years to take this to the legal aid plan and get funding to sue Metro police, and I kept being obstructed. The last time they delayed the funding so long that the six-month limitation period on the Public Authorities Protection Act cropped up and they said, "You're out of time." That was because they obstructed me so long. I was then just on regular welfare and I took \$125 of my welfare money to file my own lawsuit, and then the judge said my lawsuit was frivolous. That's the kind of justice system you have going in this province, where I can be put out of work, beaten by the police, and then a judge says, "Your lawsuit is frivolous." I think it occurred just because I didn't have a lawyer, and I didn't have a lawyer because I was too poor to afford one.

So you can't say the appropriate forum is the courts, because I've been blocked at every turn. I have been struggling for two years to get this into the courts and



I'm telling you that I have found it virtually impossible to sue the police. I also think that must be addressed. But you can't say there's some other forum; I don't think there is. I don't think the Human Rights Commission will deal with this case.

**Mr Tilson:** I have one question, Mr Chair, which is a question that Mr McCallum has asked, and that is subsection 6(4), which is the exemption of police forces with respect to parts III, IV and VI. I'd like to take this opportunity to ask any of the ministry officials who are present. I believe that was the question that was asked by Mr McCallum and it's a question that I have too: the rationale for why that exemption has been put forward in this bill.

**The Chair:** If it's all right with the other members, I would like to ask the ministry staff to answer the question.

**Ms Katherine Hewson:** Police are exempt from this act because they are covered under section 48 of the Police Services Act. There is a specific regulation dealing with employment equity for police services under that act. Since they have their own particular employment equity program under that act, it was felt that it was not necessary for them to be covered by the more general application of this act.

**Mr Tilson:** Can I ask another question on that?

**The Chair:** Of the ministry staff?

**Mr Tilson:** Yes.

**The Chair:** Then that would be your last question.

**Mr Tilson:** I'm not familiar with section 48 of the Police Services Act. My concern is, is it the same as this bill? Does it go further? Does it not go as far? Maybe that's impossible to answer in three sentences.

**Ms Hewson:** It probably isn't impossible to answer in three sentences. I'm not an expert on the Police Services Act. Actually, when you were discussing it earlier, I was trying to get some further information to provide to the committee. I could provide some information more specifically tomorrow.

**Mr Tilson:** Maybe I could leave that with you, because it is of interest. If it's the identical provisions, then that's fine, but if it's less or more, I think the committee should be aware of that.

**The Chair:** Very well. Thank you, Ms Hewson. The government members are next.

**Mr Wiseman:** On that point, if you could bring in the wording of those sections, I would appreciate seeing those too.

**Ms Hewson:** Yes, I will.

1600

**The Chair:** Other members with questions? Do the government members have a question of Mr McCallum?

**Ms Carter:** I appreciate that you've brought your problem before us, but I think we are in a difficult

position in that we can't look at the whole background in detail of what your problem is. We only know a very limited amount. Obviously, we're in no position to take action on your specific case, but I do share Mr Curling's question as to whether that has any direct bearing on this particular act that we're discussing.

**Mr McCallum:** As I said at the beginning, you can only judge an act to be effective if it will deal with the most effective case. If you find a case the act doesn't cover, and we have a disabled person, you just have to throw up your hands in despair and say, "Unfortunately, you'll never be able to work again in your entire life because there are barriers we can't deal with."

**Ms Carter:** But I think in this act we're looking at what we call systemic proposals that are going to change the whole structure of employment, if you like. There will always be individual cases that fall through the cracks whatever your general structure is, and it would seem to me that you would come more into that category. We've had IBM here today telling us how they employ large numbers of disabled people, so that kind of underlines the fact that this is a very individual problem. I would've thought the Human Rights Code would've been a more appropriate individual recourse.

**Mr McCallum:** I've had a look at the Human Rights Code and I can only appear before it with a complaint on the basis of being a disabled person. Once again, I find it appalling. I don't want to be let fall through the cracks, and I also don't want to have to deal with this as a disabled person when I can get back to work with a little bit of help. As things stand, I will never work again; I'm quite sure of that.

Every time I have managed to get back to work, I've been put out of work by the police. I came to Toronto from British Columbia to escape police harassment. I only worked at IBM for 13 weeks before I was once again thrown in jail. As I say, I didn't even receive a trial after spending more than a month behind bars, and I was kept in solitary confinement. I was denied any access to call a lawyer for 10 days. Are you going to let me fall through the cracks?

**The Chair:** We have run out of time. Mr McCallum, thank you for your presentation. I do hope that justice will prevail as you proceed with your own case.

**Mr McCallum:** I'm determined that it will.

**The Chair:** The Indo-Canada Chamber of Commerce group was scheduled tentatively to come. They've cancelled.

#### NATIONAL COUNCIL OF CANADIAN FILIPINO ASSOCIATIONS

**The Chair:** I understand there's someone here from the National Council of Canadian Filipino Associations. Would you please identify yourself, because we don't have your name.

**Ms Carmencita R. Hernandez:** Thank you for

inviting me here. My name is Carmencita Hernandez. I am the regional vice-president of the National Council of Canadian Filipino Associations. I'd like to read just excerpts of our submission to you in the interest of time.

Who are we? The National Council of Canadian Filipino Associations is a federally incorporated organization representing member associations across Canada. It aims to contribute to a viable, visible Filipino-Canadian community that can actively participate in the social, cultural, political and economic life of this country.

The national council serves as an effective voice of the Filipino-Canadian community and it is committed to working towards the development of a strong community proud of its cultural heritage and active in the building of a just, humane and prosperous society.

There are eight regional chapters of NCCFA.

We have been actively involved in the consultations of the office of the Employment Equity Commissioner. We also made a presentation on the proposed employment equity legislation last year.

The NCCFA has decided to focus on the following particular issues in this submission.

We see Bill 79 as not mandatory employment equity legislation. The proposed Employment Equity Act only provides an outline for the legislative scheme. All the other implementational details and certain essential principles of employment equity are going to be dealt with by the regulations.

We are very concerned that to include fundamental employment equity principles in the regulations may water down some of these elements. Therefore, we say that it is imperative that it should be included in the statute itself. It is also imperative that the definitions of designated groups, numerical goals and timetables and various qualitative measures, as well as the reporting mechanisms, be specified in the legislation as opposed to the regulations.

Some of you may ask, what is in a name? There are very serious concerns.

With regard to the definition of "racial minorities," some advocacy groups are concerned that the issue of subgroups is not being addressed. It is underscored that the issue of subgroups be dealt with both as a definitional issue and also as an issue of monitoring.

While the proposed definition for "person with a disability" is consistent with the feds' employment equity legislation, it does not address the issue of how disability impacts on the limitations of work.

We recommend that the definition of "designated groups" be provided under the act and not in the regulations, and also that the issue of subgroups be dealt with to ensure equitable representation for all minorities in the workplace. It should be dealt with both as a

definitional issue and an issue of monitoring. It is also recommended that the definition of "person with a disability" should also consider the issue of how disability impacts on the limitations of work.

With reference to numerical goals and timetables, we see this as one of the basic and fundamental elements of employment equity legislation. We are very concerned that the regulations allow employers to set their own goals with regard to the proportion of opportunities for entry into the occupational group. There is no mention of any standards to be set by the Employment Equity Commission in setting up these goals. Also, the word "entry" seems to apply only on hiring and promotion. It does not affect other things like firing, layoff or transfer to another job.

We recommend that the employer set up numerical goals and timetables with respect to its opportunity for change, to be defined to include hiring goals as well as composition goals.

Then we begin to look at the positive and qualitative measures. Although the act talks about the provision of positive measures in the employment equity plan with respect to the recruitment, retention and promotion of members of the designated groups, the regulations do not have provisions for positive measures. The regulations merely refer to qualitative measures without specifying what they entail.

We see that positive measures such as accelerated employment equity programs are essential to groups that are grossly underrepresented in certain workplaces. Without this, we see that these underrepresented groups will remain underrepresented.

Also, the employment equity plan must provide for elimination of barriers. What the regulations do not specify is that the measures must be made mandatory. We strongly believe that anti-racism and anti-sexual-harassment policies are fundamental to members of racial minority groups and women and that such policies should be made mandatory in every workplace. There should also be a set time frame for the implementation of these measures.

Regarding accommodation, the act provides that employers shall ensure that accommodations for persons with disability are done in a way that is consistent with the Human Rights Code. I'd like to emphasize that the Ontario Human Rights Code imposes a much higher standard on employers when it comes to accommodation for persons with disability than the employment equity legislation. The code requires employers to accommodate unless they can show that it causes undue hardship to the employers. The employment equity legislation, as it is right now, only requires "reasonable efforts." We recommend that "undue hardship" be set as a standard for accommodation and that this be included in the act and be applied to all designated groups.



Recognizing the importance and relevance of education and information, it is imperative that the role of the Employment Equity Commissioner include the conducting of broad-based public education to clearly spell out the relevant sections of this act.

We also recommend that mandatory education in employment equity be legislated in all the workplaces in Ontario as part of the employer's obligation. The NCCFA, as an advocacy group, strongly recommends that the advisory role of advocacy groups representing the designated individuals and groups and potential third-party complaints of non-compliance be incorporated in the ongoing operations of the Employment Equity Commission and be included in the act.

Also, there should be clear distinctions between the roles of the commission and the OHRC which address systemic discrimination in the workplace.

1610

**The Acting Chair (Mr Alvin Curling):** Thank you very much for your presentation. I'm going to use my discretion here with timing now and I ask for the third party to start off.

**Mr Tilson:** Do I get the Liberals' time, Mr Chairman?

**The Acting Chair:** I will give you adequate and sufficient time.

**Mrs Witmer:** Thank you very much, Carmen, for your presentation. I'm sorry I didn't get your last name.

**Ms Hernandez:** Hernandez.

**Mrs Witmer:** Thank you. I appreciate the information that you've put forward here. I'd like to deal first with the issue under your positive and qualitative measures. You mention in the last paragraph that you strongly believe that anti-racism and anti-sexual-harassment policies are fundamental. My understanding is that there are policies in place, and I guess I'm asking you what it is that is different that you're asking for.

**Ms Hernandez:** In order to protect the integrity of strong employment equity legislation, we believe that anti-racism and anti-sexual-harassment policies should be in place. What we see right now and what we have experienced are policies that are just put on the walls, but not implemented at all. But if the anti-harassment and anti-racism policies are incorporated in the act, then there would be a strong mandate for groups like ours to monitor that this is happening at the workplaces.

**Mrs Witmer:** Okay. I guess my understanding is that those policies are already in place, but you're saying that they're not effective.

**Ms Hernandez:** A policy that is in place is different from a policy that is part of legislation—

**Mrs Witmer:** Yes.

**Ms Hernandez:** —that is enshrined in the Employment Equity Act.

**Mrs Witmer:** So you want it enshrined within the—

**Ms Hernandez:** Yes.

**Mrs Witmer:** All right. Moving on to the last page, you indicate that the Employment Equity Commission needs to conduct this broad-based public education campaign. How do you propose that be done?

**Ms Hernandez:** There are a number of advocacy organizations that are also working hand in hand with the Employment Equity Commission. In addition to that, there is also a wide range of individuals who are not part of any organization, which we feel is also a group that should know more about the legislation. We do not want to find our constituency falling into the trap of comments by people who are opposing strong employment equity legislation. We strongly believe that a well-informed constituency is a constituency that will decide fully, well and be able to make decisions and take action later on.

**Mrs Witmer:** Then you go on to state that mandatory education should be legislated in all workplaces. I guess you're saying it's part of the employer's obligations, so that would be part of that employer's costs to introduce mandatory education.

**Ms Hernandez:** But that would not cost more than if they're doing the employment equity. If they're implementing the employment equity legislation properly, they will see it only as a matter of consequences to strengthen their employment equity plan. If they do not educate a workforce, then this would cause anti-racism comments and anti-woman comments coming from the workplace.

**Mrs Witmer:** That's okay, because I know the minister has indicated that this plan will only work if there's education.

**Ms Hernandez:** What we say is that this will only work if there is education, willingness of the government to push strong employment equity legislation.

**Mrs Witmer:** So it needs to be mandatory education.

**Ms Hernandez:** It has to be, yes.

**Mrs Witmer:** Right now that's voluntary. It should happen—

**Ms Hernandez:** Just like the goals and timetables and other positive measures it should be mandatory.

**Mrs Witmer:** Okay. Now, your final comment here—

**The Chair:** I'm sorry. I'm assuming there is time enough for several questions. You had one more and Mr Tilson would like to ask—would you like to leave the time for him to ask it?

**Mrs Witmer:** Just the last one here: You recommend that the advisory role here be incorporated in the ongoing operations of the Employment Equity Commission. How do you propose that this happen?

**Ms Hernandez:** Not being a lawyer, I would propose that there could be provisions in the act that would allow advocacy groups to take issues of individuals who have been wronged and also to be able to put forward third-party complaints.

**Ms Carter:** I guess the general gist of what you're saying is that you like Bill 79 but you want it to be stronger, you want more.

**Ms Hernandez:** In the absence of any bill, we want this bill to be stronger, because we are calling for strong employment equity legislation.

**Mr Curling:** In other words, it's a weak bill.

**Mr Tilson:** A very weak bill.

**Ms Carter:** Actually, I think there's more there than you give it credit for. You raised the question of subgroups. My understanding is that the bill asks that workplaces reflect the community around them, so I would have thought that was in that way taken care of. I'm just wondering what you would like to see changed to accommodate that question you have about subgroups.

**Ms Hernandez:** I believe a number of groups have put in their submissions regarding the definition of "subgroups." Coming from the Asian community, I'd like to take that as an example, because not all Asians are alike, not all Asians share the same experiences and not all Asians are equal per se. We wanted to make sure that the sector within the Asian community that is disadvantaged more than some could also be given a level playing field so that their issues could be addressed. Otherwise, if this doesn't happen, the divide and conquer rule is—

**Ms Carter:** It seems to me that since we're saying that people have to be qualified for the job in any case, the question of who is qualified is a separate issue and has to be addressed in the educational field.

**Ms Hernandez:** We strongly believe the Employment Equity Act does not say we will get unqualified people. As a matter of fact, advocacy groups like us are asking for standards to be set in the Employment Equity Act. Basically, that is a question.

However, there are biases and stereotypings in the minds of employers and even public officials, that they do not see people as equals but they see different groupings within, say, the Asian community as different. We want this stereotyping to be dismantled.

**Ms Carter:** I think we're all agreed that no matter what group you belong to you should have equal treatment, and that's what it's all about.

You also don't seem satisfied that there are anti-harassment and anti-discrimination measures in the act, but they are required elements of a plan that an employer would submit.

**Ms Hernandez:** Let us take the current experience

of the Filipino Canadian community, where Canadians of Filipino origins who are teenagers are being banned at a certain mall. We say this banning and harassment is because of their colour. The mall claims that it does have an anti-racism policy. If they do, why is this impacting much more against the Filipino Canadian youth? The question that has to be begged is, unless the policies are enshrined in an act that would also demand that certain sanctions and fines be set against employers who go against it, then nothing will move forward.

**Ms Carter:** But there are sanctions and fines in the act.

**Ms Hernandez:** Let's put it this way: It's not that strong. We want it to be strong. We also wanted the opposition to make sure that this legislation is strong.

**Mr Curling:** Exactly.

**Ms Carter:** You mentioned the question of education. I think that a large function of the Employment Equity Commission will be to facilitate the carrying out of the act by employers, and there will be a lot of support given as regards education and provision of materials and so on, so I think that objection is largely met.

**Ms Hernandez:** It is important that it really be an integral component of an act, because from here on we hope that all legislation that affects a lot of people who have socioeconomic development components would include an educational component, because, as I said earlier, it will only protect the integrity of the act and its intentions.

**Ms Carter:** I think we want the same thing, and the act is working towards it.

1620

**Mr Fletcher:** Thank you for your presentation. Basically, I'm coming from a labour background as far as negotiations and contracts are concerned. When I used to go into a negotiation to do collective agreements, I went for what I could possibly get for my constituency, which was my union, and got as much as I could to help the employees. I always knew that next time I could go back and maybe expand on some of the benefits.

A lot of what I'm hearing from a lot of groups so far is the need for education, and I agree; there is a need for education. One of the hardest things to do is to change the mindset of people, especially when people are used to working in an environment or in such a way that they don't mean to be discriminatory but they are. That's part of the systemic part of it.

I'm looking at the long term now when I look at this legislation as a stepping stone, as something to at least put the foot in the door, to start people thinking in the right way, employers and employees, how we can work to get rid of some of the barriers. As this plan gets into place and employers and employees are using it, then



we can see where changes have to be made and amendments possibly have to be made in another year, another two years, another three years, but we're on our way to getting to, hopefully, what we can call the perfect society. This kind of discrimination shouldn't be happening, and we shouldn't need this kind of legislation, but we do. That's a high goal to set, and I realize it's a high goal to set, but if we don't have someplace that we want to be, then we'll never strive to get there.

I think a lot of it has to do with, first and foremost, that part of the education is what is in this regulation and how people are going to use it and adapt their workplaces to it. Once they start to use the bill and once we start to knock down the barriers and once we start to understand what is actually happening out there, then we can work even harder, with more confidence that people are going to be on board. To say that this is a panacea, that this piece of legislation will fix all—

**Ms Hernandez:** Can I respond now? My time's running out. I was afraid you would just—

**Mr Fletcher:** It's not something we're saying. It's not going to fix the problem tomorrow, but we sure hope it works.

**Ms Hernandez:** I think what has to be remembered is that even when the bill was put forward, a lot of consultation took place, and it also happened when the other government was in power. What we say is, we don't have to educate people and we don't have to consult again before this can be accepted. What we're trying to say is that statements have already been made as to how to make this stronger, and it should be made stronger. There were deputations made before by the Alliance for Employment Equity, the Coalition of Visible Minority Women, the National Action Committee on the Status of Women and the Disabled People for Employment Equity. We're also coming back again here to ask for stronger legislation, and what we are putting forward are elements that would make this employment equity legislation stronger.

What you said about education we agree with, but we are saying that there is already some education that took place and we just hope people would really internalize it and put it into application, and as we go along getting a stronger Employment Equity Act in place, we also see our role as educating our constituency to support it.

Let us put it this way: The power relationship between business and our constituencies is not the same. Maybe if we called ourselves a consortium of racial minority people, the impact on this committee would be different.

**Mr Curling:** Ms Hernandez, I've listened to many of your presentations and they've always been very effective, very focused and well researched. As I hear Mr Fletcher trying to justify this weak legislation to you, really what he is saying is that he has not listened.

**Ms Hernandez:** I want to respond to that too.

**Mr Curling:** The fact is that many governments have made some attempt.

**Mr Fletcher:** You didn't have any legislation, Alvin. You were the minister, and you didn't have any legislation when you were in power.

**Mr Winninger:** Come on. Don't let the facts get in the way.

**Mr Curling:** Many attempts have been made, and now we have the opportunity to have a bill before us. As a matter of fact, I thought their government had listened before with his leader's private member's bill. We thought he had gotten the message and put a bill out, but we see no sign of that.

What I want to deal with too—I know you recall Stephen Lewis's report. He spoke about the subgroup here, and you spoke about it. Do you feel it is completely inadequate? Did they make any attempt at all in this one to deal with the subgroups within this? If they haven't, how do you feel they should deal with it?

**Ms Hernandez:** The issue of subgroups was dealt with when the private member's bill was presented way back in 1989 or so. It was quite unfortunate that the government at the time did not support that particular bill, because we in the community were very supportive of that bill, and that also includes a number of labour people.

The subgroups dilemma should be recognized, because if it's not recognized, that means to say that with the coming forward of various groups, their experiences are not heard by anybody. It's very important that that definition also be included and be defined well.

**Mr Curling:** Yes, and you're right that when the Liberals, I think you wanted to say, were in power they did not deal with the subgroup.

**Ms Hernandez:** No, they did not deal with the private member's bill, because we worked very hard for that bill.

**Mr Curling:** I understand that, and I'm not here to defend my party or defend the government. I'm here to make sure that an employment equity bill is strong enough to bring about justice to all, as it says. Do you see this bill really more or less creating an illusion that change is happening?

**Ms Hernandez:** What we see is we should be interacting with this bill to make it stronger, bring back the results of the consultation that the government at that time considered from the community and be incorporated in this bill. I'm sure they will all be in the submissions of groups like the Women's Coalition for Employment Equity, the Alliance for Employment Equity, the Coalition of Visible Minority Women, NAC, also Disabled People for Employment Equity, also including, I'm sure, the deputation from native com-

munities. If all this is integrated and incorporated, then this will be very strong employment equity legislation.

**Mr Curling:** Do you see any duplication at all with the Employment Equity Act, Bill 79, and the Human Rights Commission?

**Ms Hernandez:** No, there is a big difference. The Ontario Human Rights Commission is complaint-driven and the employment equity legislation is an applied human rights process.

**Mr Curling:** Having said all of that, looking at the bill, do you see any—I don't want you to tell me what the intent is. I know the intent of the Employment Equity Act and I agree with you, but do you see any duplication here?

**Ms Hernandez:** Because of the demands from the community on what we want in employment equity legislation, I do not see any duplication. What is very important is that we go back to our call for a clearer definition of terms, for timetables and goals, for time frames. If it is not clear, they might be one and the same 10 years from now if the mandate is not very clear.

**Mr Curling:** My last question; I know you are anxious, Mr Chair. The Cornish report talks about the changes and the reforms to the Human Rights Commission. Should the government take this under consideration? Also, while I'm asking you that, if the Access to Trades and Professions in Ontario recommendations are being looked at seriously and being implemented, do you think it would have a great impact on this employment equity—

**Ms Hernandez:** Let's put it this way. If we have a strong Employment Equity Act, then the work of Access to Trades and Professions will take just a normal course, a natural course, and it will complement the Employment Equity Act legislation.

**The Chair:** Ms Hernandez, thank you very much for coming and participating in these discussions.

**Ms Hernandez:** Thank you.

**The Chair:** If there are no other matters of a public nature, I would like us to recess for two moments while the room clears and we can then deal with a private matter.

The committee adjourned at 1629.









*Continued from overleaf*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Acting Chair / Président suppléant:** Curling, Alvin (Scarborough North/-Nord L)
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  - Malkowski, Gary (York East/-Est ND)
  - Mills, Gordon (Durham East/-Est ND)
- \*Murphy, Tim (St George-St David L)
- \*Tilson, David (Dufferin-Peel PC)
- \*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Caplan, Elinor (Oriole L) for Mr Chiarelli  
Carter, Jenny (Peterborough ND) for Mr Malkowski  
Fletcher, Derek (Guelph ND) for Mr Duignan  
Perruzza, Anthony (Downsview ND) for Mr Mills  
Wiseman, Jim (Durham West/-Ouest ND) for Ms Akande  
Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

### **Also taking part / Autres participants et participantes:**

Hewson, Katherine, manager, employment equity legislation and regulations unit, Ministry of Citizenship

**Clerk / Greffière:** Freedman, Lisa

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

### **Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service  
Kaye, Philip, research officer, Legislative Research Service

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Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 18 August 1993



# Journal des débats (Hansard)

Mercredi 18 août 1993

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman



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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 18 August 1993

The committee met at 1004 in room 151.

## EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. I want to welcome the deputants here this morning, Mr Hargrove and Ms Nash.

**Mr Derek Fletcher (Guelph):** On a point of order, Mr Chairman: Concerning the testimony given by Mr Michael Buckborough yesterday afternoon, I have a note here that the OPP reports that it has never had an application from anybody named Michael Buckborough. In 1991 it did have an application from another Buckborough but with an entirely different first name. The application records have been kept on file since the early 1980s.

Their stats show that the most recent graduating class, July 29, 1993, was 50% male, approximately 40% of whom were white males. The other stats are: 50% women, 9% racial minorities, approximately 2% aboriginals and approximately 7% disabled people.

According to Mr Buckborough's information yesterday that he put on the record, this contradicts it, and this was sent to us from the OPP.

**The Chair:** Thank you, Mr Fletcher. I'm not sure it's a point of order, but I think the information is useful.

## CAW CANADA

**The Chair:** Mr Hargrove and Ms Nash, welcome. We have a half an hour for your presentation. You probably know how it works. You might want to leave plenty of time for questions and answers. You can begin at any time.

**Mr Buzz Hargrove:** We have another member of our delegation who will be joining us—she had an early meeting this morning—Lisa Kelly from our legal department staff.

The first six pages of our brief are a summary of the CAW's position on Bill 79. I'd like to read that into the record—that shouldn't take long—and then take questions or comments.

The National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, CAW Canada,

represents upwards of 170,000 workers in a broad range of Canadian industries; 70% of our members work in Ontario. Over the past decade, the number of women in our union has doubled. Women now make up approximately 20% of our membership.

CAW welcomes the opportunity once again to make our views known on employment equity and Bill 79 to the Ontario government. We have participated in the development of the Ontario Federation of Labour response and we support its very detailed position. In this brief we will first outline some of our major concerns and then proceed in more detail.

We present our views from the perspective of a union that has some experience in negotiating and implementing employment equity measures since the mid-1980s. These include conducting extensive training in human rights and harassment, creating a child care centre for parents working shifts and participating in workplace employment equity committees.

While we struggle for equality in the workplace, we are painfully aware that racism, sexism and other forms of discrimination continue to plague Ontario workplaces. We also know well that systemic discrimination continues to deny many workers jobs.

We have participated in extensive consultations throughout the development of Bill 79 and the regulations, including as members of the minister's advisory committee on employment equity and on the regulations development advisory group. While we have found the consultation process a lengthy and frustrating exercise, we remain hopeful that our views will be heard by this committee.

Our concern is that consultations seem to have led to an increasingly weak approach to employment equity. Bill 79 sounds progressive and ground-breaking, but in reality it may not make much progress in the workplace and in fact it may weaken rights that already exist in the Human Rights Code and in collective agreements.

The NDP, while in opposition, prepared a private member's bill on employment equity that took a tough and principled stand. However, in spite of the Ontario government's expressed commitment to mandatory employment equity, we find Bill 79 is a disappointing attempt at achieving this goal.

The bill itself is thin and vague. We object to the unusual approach of leaving most of the important content to the regulations. As with other legislation, the bill should include the key provisions, with the regulations providing more technical detail as required.

We are also concerned about provisions in Bill 79 and the regulations which allow employer discretion

where it should require mandatory compliance. The bill sets up a structure for employment equity with procedures for gathering information and setting goals. However, this process is undermined in several places by leaving the decision-making power up to the employer, who will determine what is reasonable, and in many cases without the involvement of the union.

For example, in organized workplaces it is not spelled out clearly that the union must play a joint role in developing and reviewing the employment equity program. Bill 79 also allows employers to sunset completed workforce surveys and employment systems reviews even when the union was not involved in developing these. There is also concern that the requirement for employers to make "reasonable efforts" may undermine the "undue hardship" provisions of the human rights legislation. Further, allowing employers to set their own goals and timetables and determine what is achievable really just amounts to voluntary employment equity, or a continuation of the status quo.

Our experience with employers is that they will not make employment equity a reality until they are forced to do so. We know from limited negotiated provisions and from the federal legislation that voluntary employment equity rarely gets farther than the paper it's written on.

#### 1010

If employers were serious about employment equity, they could already have made many important changes voluntarily. They control the hiring, physical workplace premises, how work is organized, the speed of production, the purchase of materials, the job requirements and so on. They could make enormous progress through fairer hiring, making workplaces accessible, eliminating workplace harassment and improving access to training, but most employers do little or nothing to advance equality in the workplace.

To now allow employers to determine whether or not they are making reasonable attempts to achieve employment equity is ridiculous. So too with the lack of public accountability. If employers are not required to make plans accessible in the workplace and to the public, many will not make a serious effort to achieve equity.

We also strongly object to the possible erosion of seniority rights with Bill 79. Given the employer's enormous power and control in the workplace, to suggest that if it were not for seniority there would be greater equality is naïve at best. Management ranks and non-union employers are hardly models of employment equity, yet seniority is the only barrier listed in Bill 79.

We urge the Ontario government to delete paragraph 41(1)5 from the bill. We further recommend that subsection 5(2) of the bill be amended, as detailed later in our brief, to protect existing seniority rights as long as they're in compliance with the Ontario Human Rights Code.

Our workplace union representatives fight every day of their lives to advance workers' rights in the workplace against the arbitrary power of the employer. Seniority rights can mean that an aging worker has the right to bid off a physically demanding job to an easier one. It can mean that a worker with a disability has a right to a given job that may become available and then require the employer to accommodate that job even though there might be others in the workplace who might be more qualified.

For the CAW, the issue is not who is the most qualified but whether the person with the seniority has the ability and the skill, with training and accommodation if necessary, to perform the required job. We reject the employer argument that merit, or in other words best qualified, should be the governing principle in the workplace.

We do understand the need for special measures such as lateral entry for people with disabilities and special provisions for women to enter non-traditional jobs in the skilled trades. We want to be involved in determining if and how such measures would be introduced.

We have also placed a priority on bargaining innovative provisions to improve retirement pensions so that the aging workforce can retire in dignity while jobs are created and secured for younger workers. We continue to press the federal government to allow senior workers to go out on layoff based on inverse seniority and to access the supplementary unemployment benefits so that older workers get a break from the workplace with financial security while younger workers keep their security and greater income when they need it most. We have also made reduced work time a bargaining priority in order to create new jobs. These measures will improve the retention of the designated groups in the workplace.

We further call on the government to amend the bill to include smaller workplaces, where the most job growth is likely to occur. In many traditional industrial workplaces, and unfortunately in many public sector workplaces, there will be only minimal job growth for the foreseeable future. It makes no sense to exempt the workplaces that are likely to grow from the requirement to achieve basic equity provisions.

The Ontario government now has, with this legislation, the opportunity to make important progressive changes in our workplaces. We reject the notion that such changes should be postponed because of the recession. Many members of the designated groups live in a permanent recession because of systemic discrimination. We urge the government to make this legislation meaningful and effective while ensuring that the current workforce maintains its security and hard-won rights during these difficult economic times.

That's a summation of our brief, Mr Chair, and I'll be happy to take questions or comments on the brief.



**The Chair:** Thank you, Mr Hargrove. We'll continue the rotation of questions and we'll begin with government members. I have Mr Fletcher. We have approximately six and a half minutes per caucus.

**Mr Fletcher:** Thank you for your presentation. I'm just wondering, with all the collective agreements that the CAW handles, has it ever negotiated a clause in its collective agreements to implement an employment equity committee made up of management and bargaining members?

**Mr Hargrove:** Yes, we have in some agreements employment equity committees.

**Mr Fletcher:** How does that work? Is it working well?

**Mr Hargrove:** The employment equity committees for the most part have tried to develop an employment equity plan with the employer. It hasn't got very far, quite frankly. I think the most positive part of the plan so far has been the outreach that these committees have been able to accomplish by going into the visible minority communities, into the schools, into the women's groups, and talking about the opportunities in the workplace and encouraging them to apply for employment that they wouldn't normally apply for because they think they would not be hired.

**Mr Fletcher:** Is management going along with this? Are they participating?

**Mr Hargrove:** They're going along with it only in the sense that there's no requirement, there's no pressure, there's no force. We haven't been able to bargain, in spite of the strength of our union, numerical goals and timetables for hiring of the targeted groups. We haven't been able to accomplish that in any collective agreement.

**Mr Fletcher:** So Bill 79, as far as that part is concerned, is a step in the right direction, as far as numerical goals.

**Mr Hargrove:** Bill 79 is similar to what we've been able to accomplish voluntarily with the employers, but it's meaningless in the sense that it doesn't force them to take the steps that we think are necessary if you really are going to deal with this important issue.

**Mr David Winninger (London South):** I certainly appreciated your comments and your suggestion to amend subsection 5(2) of the act. It's my understanding of the bill that if job growth occurs in particular workplaces that right now would be exempt from the provisions of Bill 79, they then, once they reach those levels of employment, no longer are exempt. So I didn't quite understand the second-last paragraph that you read that suggested that workplaces that are likely to grow from the requirement to achieve basic equity provisions should not be exempt. Do we interpret the act differently?

**Mr Hargrove:** All of the analysts we've talked to

say the workplaces from 5 to 20 are the growth areas of the future, and this legislation, as we understand it, would exempt them from the act. The growth would have to go above 100 people and we don't see that happening in a lot of workplaces. That would play a very minor role if you look to just that group in the future.

**Mr Winninger:** I take your point, but I just wanted to make sure that there was the understanding there that once they reach present levels of employment, they're no longer exempt.

**Mr Hargrove:** Yes, we understand that.

**Mr Winninger:** Secondly, there's an indication in your brief that these employment equity objectives should be made mandatory in some way. At the same time, though, we have this struggle between existing seniority rights and the desire to put teeth into employment equity legislation. For example, the Committee on the Status of Women, which has presented a brief, and they'll be presenting here today, has suggested that seniority has been a barrier in going from one sector of an employer to another because they can't take their seniority rights with them and would like to see protection in that regard. I wonder if you could comment on how seniority and the right to employment equity can be dovetailed in a more effective way.

**Mr Hargrove:** The example you just gave would be so minute in the overall scheme of things that those people who want to try to keep the focus and blame the lack of the targeted groups being in the workplace on unions can point to very limited examples. Some of them, especially in the public sector, as I understand it, have restrictions between bargaining units.

My position on that is quite simple: Where there are barriers between two bargaining units of the same employer, then the union and the company have an obligation to sit down and work those out to allow people to transfer with seniority, as long as it doesn't take away from the people in that unit. In other words, you shouldn't allow someone to transfer from one bargaining unit to another and lay off someone in the receiving bargaining unit.

Seniority is not a barrier. The people who are talking about seniority being a barrier, most of them haven't spent 10 minutes in a workplace. I spent my life in the workplace. I think I know a little bit about seniority.

**Mr Winninger:** I guess that brings me briefly to my third point in regard to participation of employees in setting goals for companies. As you know, there is some machinery built into the act which is designed to encourage employee participation in setting goals, breaking down barriers and developing an employment equity plan. How would you like to see those provisions strengthened? Clearly, from your brief, you feel they're inadequate. I'm talking now about the joint employer-employee committees.

**Ms Peggy Nash:** The bill says that there should be joint involvement in most of the major elements of the legislation, but it's undermined by the regulations, which just define most of the provisions with employer involvement. Then there's one clause that says, "Where we say 'employer,' we mean also the bargaining agent." We want it spelled out very clearly that throughout the process it should be the union and management, because our experience is that we have had to force the employers to even address, to even look at the issue of employment equity. We've had to force them at the bargaining table to even sit down with us to set up a committee and begin talking about employment equity. We want it very clear that our involvement should be from the very beginning and throughout the process, and that also gets to the issue of the sunset of existing workplace surveys and the census etc. It's crucial that the existing workers buy into the process from the beginning with their involvement on employment equity.

1020

**Mr Winninger:** I see. Certainly, the draft regulation is out there for consultation and I'm sure your comments will be greatly appreciated by the minister.

**The Chair:** Very well. We need to move on to the next speaker. Before I do that, I want to welcome Ms Kelly to these hearings.

**Ms Lisa Kelly:** Thank you; I apologize for being late.

**The Chair:** That's quite all right.

**Mr Alvin Curling (Scarborough North):** Thank you for your presentation. Some of the things that you mentioned in here are things that my party has been saying all along, that this is weak legislation and that it could do more harm having weak legislation at all. We hope the government will be listening.

It is quite appropriate when you mention about the fact how progressive the government of today was when it was in opposition. It presented a private member's bill on employment equity, and as soon as it got into power it reversed and put itself in a reverse gear and made this rather weak bill here itself.

I'll come to that later on, about your seniority, the seniority situation that has been made provision for in here, in the bill. I'll come to that soon.

I want to talk specifically about your organization itself. Would you say that the CAW itself has had its employment equity enforced and that there are good results there reflecting the community, the geographic region you represent? I'm talking about the CAW itself.

**Mr Hargrove:** We wouldn't put ourselves up as the model for the country—there may be some better—but I would say that we have moved light-years in the last decade on all of these issues. For example, we've hired, in the last decade, staff members for the top positions in

our union, and now women reflect on our staff the percentage of women in the workplace.

We changed our constitution for a mandatory requirement to have both women and visible minorities on our 13-member executive board, the parliamentary body of our union from across Canada.

I have been elected president one year now. I have made one staff appointment, and that was a visible minority. I made the commitment at our convention that I was going to start moving on the area of visible minorities. We have native Canadians on our staff. We are working towards full employment equity in every aspect of our union. We're talking about bargaining committee members. We have in place probably one of the most extensive training programs for workers of colour, for assertiveness training for women, special programs for women of colour. We have programs now in all of our local unions that require, by constitution, the locals to provide child care services during all meetings that allow women, including the paying of individual child care providers, if that's necessary.

We may not be the model, but I would challenge any employer in the province to be anywhere near where we're at on the issues.

**Mr Curling:** That's unfortunate, because I want to see unions as one of the progressive institutions that fight for the rights of all. I think what you are saying to me too is that you have not progressed.

**Mr Hargrove:** You didn't listen to what I said, Mr Curling. If you read that into what I said, you're at a different meeting than I am.

**Mr Curling:** In the sense that you're saying that there is still a far way to go in employing disabled and—

**Mr Hargrove:** No, I didn't say that. We have people of disability on our staff. I said that we may not be the model, but we are working towards and that in most areas we are very close. I don't want to say we're 100% today, but I'll challenge you to find another organization in the country that's any closer to 100% on these issues.

**Mr Curling:** The idea you're saying is how we define progress anyhow. You're saying that you have maybe the one or two in your organization, and that is progress.

**Mr Hargrove:** That's not true. That is an absolute misrepresentation of my presentation this morning, Mr Curling.

**The Chair:** Mr Hargrove, I think you were quite clear. I'm going to ask him to continue with the next question. Mr Curling, go ahead.

**Mr Curling:** I never even started the question properly.

**Mr Hargrove:** No, he can't. I happen to be the



witness, and you're not going to twist my words, you or him.

**Mr Curling:** It's just that I want to understand you. One of the worst things to do about listening is misunderstanding what you've said. Did you say that most people do not spend their life in the workplace? I heard you saying that a while ago, and that you have. The fact is, I presume, that most people who are working, they must be in the workplace itself, because the remark you said, "Most people don't spend their lives in the workplace."

**Mr Hargrove:** Where seniority determines rights.

**Mr Curling:** I didn't hear that part. But the fact is, though, I'm still concerned. Why would you feel that seniority provision, which I feel is pretty weak as a matter of fact, I feel that seniority shouldn't be a part of it anyhow, in other words, that seniority shouldn't be a part of employment equity, provision made to protect—

**Ms Margaret H. Harrington (Niagara Falls):** Just chuck out everybody and put in—

**Mr Curling:** You'll get your chance, Ms Harrington, to ask your question. Could you explain to me, really, where do you see that this seniority provision here would in any way impede your progress in—

**Mr Hargrove:** In our workplaces, job postings by collective agreement are put up in the department in the plant, and workers bid on those jobs based on their seniority. The seniority does not show the colour of a worker; it doesn't show the sex of a worker, the religion of a worker. It allows workers to move through the system. I would recommend, if you seriously think seniority is an impediment, you should talk to some people from the women's groups, the visible minority community who are working in our shop.

Let me give you one example of a recent happening. General Motors closed down its Scarborough plant. In the auto industry it was the model for employment equity. There were more visible minorities and women in that factory than probably any factory in the province. They would all be unemployed today except we have a seniority provision that allows them to go into the Oshawa facility. There are a large number of them, as a result of our union negotiating a third shift in the truck plant down there, who have jobs today because of our seniority provisions who wouldn't have those jobs if we didn't do that.

I would challenge any member of the committee, in our union, to show where seniority has been a bar to equity within the workplace. The real problem is employers are not hiring the targeted groups. Once they're in the workplace, seniority is the equalizer for all. It doesn't discriminate against any people.

**Mr Curling:** One quick—

**The Chair:** Mr Curling, we can't. If we do that then we'll have a problem with time.

**Mr Curling:** They were interacting on my time.

**The Chair:** You have been given more than adequate time. Ms Witmer, then Mr Tilson if time allows.

**Mrs Elizabeth Witmer (Waterloo North):** Thank you for your presentation. You indicated on page 5 that you do not believe that merit should be the governing principle in the workplace, and I guess personally I feel very strongly that there needs to be a preservation of merit in order that the best-qualified person should get the position. To me that's fairness and equity, and I guess I hear you saying that you reject that. Those are your words. Could you explain that further for me, please.

**Mr Hargrove:** Yes. Again, best qualified. If we just took the people in this room, including myself, depending on who made the determination, a lot of us might not be here, including you and I. Einstein might be the best-qualified person to be a septic tank operator, but you don't necessarily need all of those skills. As long as someone has the skills and can grow into the job by training, we believe that person should have the right to this job, not based on the employer who says this person has more merit or more ability. That's where seniority comes in as well. It takes away the unilateral right of the employer to determine who gets the job once you're in the workplace.

**Mrs Witmer:** I'm not sure that we disagree with one another, by the way. I still hear you saying that the best-qualified person should get the job.

**Mr Hargrove:** No. Again, maybe I'm not speaking clear this morning. I said the person with the seniority who has the ability and may not be the best qualified but has the ability and with training or accommodation on the job should get that job. They may not be the best qualified out of all of the applicants.

1030

**The Chair:** Ms Nash, did you want to comment as well?

**Ms Nash:** I was just going to say, to clarify, if you think of, say, an industrial workplace where there's a job opening coming up. I may be the next person on the seniority list and so I want to apply for that job and maybe I need a little bit of training, but I'm entitled to get that job. There may be someone in the plant who has an automotive maintenance certificate or something who may be objectively the best qualified if you use that as the equalizer, but I'm the next person in line and I maybe don't have that certificate, but I have the right to bid for that job and with my seniority to get it and to demand the training that will allow me to do that job.

**Mrs Witmer:** But both of you are talking about already being in the workplace, whereas I'm talking about coming from outside the workplace.

**Mr Hargrove:** Well, the same argument, even more

important at that point. There's all kinds of systemic discrimination taking place today in hiring. The auto industry, for example, has these special GATB tests it puts in place, and they clearly provide a barrier to a lot of groups getting into the workplace. Yet history will show: In the plants today we have people who have very little education—we're doing a lot of training on literacy and we're finding out that people can't read or write—but these same people are building some of the best cars built in the world; the quality, the productivity is as good as anywhere in the world. Yet if you let the corporations run the show, the workforce in the future will all have at least high school equivalent or up and a high IQ that has absolutely no bearing on how you put together an automobile. It will keep a lot of groups out, especially the groups we're talking about in this legislation, and it will add absolutely nothing to our society.

**Mrs Witmer:** So what are you saying is not important, that literacy and numeracy skills are not important?

**Mr Hargrove:** I'm saying that just because people haven't had the opportunity that you and I may have had to go to school, they shouldn't be kept out of the factories by these barriers that the employers put up. They can still do the work as well as any individual who comes in there with a university degree.

**Mrs Witmer:** But don't we have a responsibility to make sure that people do have the numeracy and the literacy skills?

**Mr Hargrove:** Yes, we do, and our union is doing that.

**Mr David Tilson (Dufferin-Peel):** Do you believe this bill has systemic discrimination against white males?

**Mr Hargrove:** No. If you look in the workplace today, there's not much argument that there has been discrimination or will be discrimination against white males.

**Mr Tilson:** If you're looking at it today.

**Mr Hargrove:** I said or in the future. If you took a photo of today and you look at the future, you'd have to really be reaching to think that somehow there's going to be discrimination against white males, because that has not been the record.

**Mr Tilson:** That has been criticism that has come from some delegations to this committee.

I appreciate your thoughts on bringing some of the regulations into the bill. Personally, I'm averse to bureaucrats changing the rules in midstream, or indeed legislators or members of this committee or you or I being unable to properly debate the major principles of the particular piece of legislation. This bill is yet another example of what this government is doing, that we don't seem to have the opportunity to do that at this committee.

The other issue on which I have sympathy with what

you're saying is the issue of seniority, that that principle seems to be withering away with this piece of legislation. The question that I have for you is an issue that has been raised at this committee.

As I understand it, a survey or a plan must be put forward by the employer with a goal to achieving a representation of members of certain designated groups in each occupational group. Then the Employment Equity Commission can review that and if it's deemed that it hasn't reached its timetables or that the designated groups don't fit into it, that employer will be deemed to be guilty of non-compliance with the principles of employment equity.

That sounds fine, and there may well be many or some companies that haven't followed principles of employment equity, for whatever reason, to date. The fear I have is, will that result in certain people being laid off in order to meet down the line the timetables that are being imposed by this legislation through the commissioner, through a tribunal to a particular employer? What will that do to existing employees you now represent?

**Ms Nash:** I just think that's fear-mongering. The point of this legislation—again, we just wish it were tougher—is to force employers to hire fairly and to treat people fairly once they're in the workplace. The scenario you're painting is exactly what shouldn't happen, and the legislation is clear that seniority will apply for layoff and recall; that's very clear and we have no quarrel with that. People will not be laid off in order to achieve employment equity. All we're saying is that within the workplace for other job opportunities seniority should also be protected, as long as it's not discriminatory but is bona fide seniority in accordance with the Human Rights Code.

**Mr Tilson:** I agree that at the outset that makes sense. I'm talking about existing companies which, for whatever reason—inadvertent, advertent, whatever—have an unfair distribution. Meanwhile, those people and many whom you may in fact represent could conceivably—if we're saying, particularly when you look at the preamble of this bill, that there's been widespread discrimination in this province, and that's what this bill says and that's why this bill is being put forward, because there's widespread discrimination, that, by implication, means that down the line we're going to have a number of people laid off to enforce the principles of this bill.

**Ms Kelly:** If I can address that, if you look at the powers of the commission, the powers of the tribunal, none of them are aimed in that area, and if you look at the history of the courts, in the Supreme Court of Canada and *Action travail des femmes*, there is some punishment for past wrongs in terms of fines, but the goal is forward-looking: that if you haven't achieved your goals then perhaps you're going to have to report



more regularly and your next plan will be audited earlier. But I don't think there's anything in the bill or the regulations that give the tribunal the ability to get in there and force certain people to be laid off. I agree with Peggy. I think that's scaremongering.

**Mr Hargrove:** We, on behalf of our presentation, are not proposing that, either.

**Mr Tilson:** I hope you're right.

**The Chair:** Sorry, we've run out of time. Mr Hargrove, Ms Nash and Ms Kelly, thank you very much for coming and making this presentation to us today.

**Mr Hargrove:** Thank you, Mr Chair and the committee, for the opportunity of being here this morning.

HARISH C. JAIN

**The Chair:** I'd like to call Professor Harish Jain.

**Mr Harish C. Jain:** Thank you very much for the opportunity to be here. I'd like to just go into a little bit of introduction for a couple of minutes and then move to the projection of overhead slides so that we can see in point form because of lack of time.

The workforce in Canada, especially in this province, is changing dramatically. Projections indicate that more than 70% of the new workforce entrants by the year 2000, the end of this decade, will be women and minorities. Therefore, only 15% to 20% will be white males.

The changing demographic makeup of the Canadian workforce in the labour market suggests that increasingly the jobs will be filled by women and by minorities. At the same time, there have been and will be increases in managerial and professional jobs by the end of this decade. Since commerce and trading with other nations is becoming the mainstay of Canada and international competition is on the increase, managers of Ontario and Canadian organizations will increasingly work with their counterparts from different countries, cultures, ethnic and racial groups. Canadian organizations and management must, of necessity, utilize talent regardless of gender, colour, religion etc to be competitive, to survive and to grow.

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Managing a diverse workforce therefore has become a bottom-line issue if Canadian organizations are to gain and retain their competitive edge. From the perspective of this province, and from the perspective of the nation as a whole, underutilization and unemployment of women and racial minorities in particular has significant economic costs. There are three different studies available, two in the United States and one in the UK, that show that this underutilization and/or unemployment of these groups can result in an estimated loss of several percentage points of national income, which runs into billions of dollars.

If I have time I'll be pleased to give you details of these studies, but the point I'm making is that in terms

of underutilization, significant economic cost in terms of lower national output, labour market inefficiency, high inflation and excessive welfare and penal system costs are the result of discrimination and lack of equity in the workplace.

The clerk's memo said that I should point out some factual information, so let me give you my research that I have been doing over the last 10 years. Serving the parliamentary committee on visible minorities, I was told, "There's no research to back up what you're saying," so I started doing the research.

I have done three studies of the same police forces across this country, 14 of them, the same police organizations including the largest in the large urban centres: one in 1985, in 1988 and then in 1990. Those studies indicate—and partly as a result of that, under the Liberal government the Police Services Act came about, which was supported by the NDP in opposition and which I thought was a very progressive bill—the highest percentage of visible minorities in police forces is in Metro Toronto. In 1990 that was 5% of police officers—in Toronto, as you know, the community representation is close to 18%—and that's despite the fact that the Metro Toronto police has had employment equity since 1983.

I also wanted to do directly a study on employment equity, so I have done three different studies on employment equity throughout this country. Most of the organizations that participated, private and public sector, are in this province. One was done in 1985, another one was done three years later and the third in 1991. In all these three studies, I found in the same organizations across this country very little progress because employment equity is voluntary, because there is no mandatory bill that says you must have goals and timetables.

Also, under my supervision, a student did a study of newspapers in this country, 10 newspapers which account for 85% of the circulation in this province, and what he found was that in December 1986 three groups—visible minorities, natives and people with disabilities—represented only 30 or 1.7% of the 1,731 full-time newsroom employees. The reason I have cited these is to indicate that without mandatory employment equity, there is not likely to be much progress.

In my view, this bill that was presented in 1992 does have some positive features—let me just go over these—as well as some problems.

The positive features of the act: In the preamble and in the principles, it is recognized that there is systemic discrimination. The scope and coverage of the act, although I think it's inadequate, certainly is better than the federal bill, the federal legislation.

The employer and union joint responsibility that are listed in the bill need some improvement, but certainly are far better in this than in the federal employment

equity legislation. There is a specific provision of the Employment Equity Commission and tribunals which I think is a very progressive step, because we have been asking for that. In my research I have suggested that the Canadian Human Rights Commission is not able to cope with the federal employment equity bill complaints regarding employment equity, and we suggested a separate Employment Equity Commission. I think this has happened in this particular case. There are some very important contract compliance provisions that are listed in this bill.

The recommendations I would like to make, which I think are very serious weaknesses in this bill, are as follows.

Everything has been relegated to regulations, and the regulations that have come out are extremely weak. They will set the cause of employment equity, in my view, back. They are not going to be progressive. I would be glad to go into details later on.

I think there should be mandatory filing of employment equity plans and this should be done regularly with the Employment Equity Commission, and that should be put in the act itself. The act is misleading because it suggests that there are specific plans that employers are going to be required to do, and when we see the regulations, that is not so.

There ought to be regular annual public reporting of designated group numbers by levels, salary groups etc, just like in the federal employment equity plans that are required of banks, transportation and communication companies.

There ought to be a standard survey questionnaire so there is not the confusion that exists in the federal Employment Equity Act and the provisions and the regulations under that bill.

I think there should be a clear definition of the designated groups, not in the regulations but in the act. There ought to be minimum standards for goals and timetables in the act itself. In a number of places in the regulations, timetables are not even mentioned, which I think is a serious failure. That is why I think the regulations, if they're adopted, would be a setback.

We should adopt an expedited arbitration model for the Employment Equity Tribunal that exists in the Ontario Labour Relations Act, and finally, we should specify that the Employment Equity Commission and the tribunal, especially the commission, will have 50% or more designated group members, and the rest from the employer and the union groups.

I think those are the main recommendations. Having limited time, I would be glad to answer questions that you might have.

**The Chair:** Thank you, Mr Jain. We'll begin with the official opposition, six minutes per caucus.

**Mrs Elinor Caplan (Oriole):** I'd like to thank you

for a very excellent presentation. I'd like you to expand a little bit, if you will, on your concern that one of the problems, as you defined it, is that the regulation you believe will set the goals of employment equity back. Could you expand on that a little bit for us, please?

**Mr Jain:** I think the regulations don't really require employers—I mean, all they have to file is a certificate. There is no filing of the plan. Academics like myself have done research on the federal employment equity plans only because they're publicly available. We ordered them in our library at McMaster University and the students are able to do term papers. The designated groups can look at the numbers and the salary ranges and we can tell whether the employer has or has not made progress.

If you look at the complaints before the Canadian Human Rights Commission, they have been prompted because this information is publicly available. Otherwise, whatever little progress has been made under the federal employment equity legislation would not have been made. That is the reason.

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**Mrs Caplan:** One more question and then I'll yield to my colleague. You made a very strong presentation that the principles and goals of employment equity are good for business, given both the trading nature of our province as well as the reality that 70% of the new labour force will be from the defined designated groups, yet there doesn't seem to be anything in this legislation that provides that kind of incentive for business to come to that conclusion through educational understanding rather than the big stick of legislated approach. Do you have any comment on that? Because I share your concerns about legislation actually setting the cause and the goals back.

**Mr Jain:** I agree with you. I think there ought to be certainly a very important educational role and funding ought to be allocated to the commission, and as well, OTAB should work far more vigorously in that direction. The proposed Ontario Training and Adjustment Board should really be a vehicle for this kind of training effort.

In these regulations, you'll notice there is nothing that talks about positive action—

**Mrs Caplan:** Exactly.

**Mr Jain:** —which I think is a tremendous failure. You look at the bill, it says "positive action" all the way. When you look at the regulations, not one word. If you don't have proactive—which is what positive means—action, why do you criticize the Toronto police and all the other police forces? Why do you have in the Police Services Act such strong regulations that the police chief can be fired, the board can be fired, if they do not implement—where are the sanctions in this bill? There is nothing. That is very disappointing. Both carrot



and stick need to be there, and they go together, in my view.

**Mr Curling:** I'm hearing you saying that being that this is regressive legislation, you will not support an employment equity bill like this.

**Mr Jain:** Let me put it this way: When the federal employment equity bill was proposed, I thought it was very weak but I supported it. I went to Senator Marsden saying, "If you do not support it, we will be very unhappy." She did. She changed her mind. I will support the bill because it's a step in the right direction. However, the regulations can be changed with a change in the government, or even this government. I'm very practical in that sense. I don't want to be on cloud nine or academic about these things. I know progress sometimes inch by inch is more important than no progress at all.

**Mr Curling:** Are you concerned that the non-union people within a company are not at the table planning the employment equity plan too?

**Mr Jain:** I am very concerned because here we have the pay equity legislation, which has been recently strengthened and amended, yet employment equity—we haven't learned anything from the pay equity legislation. We haven't learned a thing from the federal employment equity legislation. We have had six, seven years of that legislation and the biggest weakness—Alan Redway, the chair of the committee reviewing that act, himself recommended to the government—he comes from the same party—that you should strengthen this bill. So I am concerned, yes.

**The Chair:** One final question.

**Mr Curling:** Another question completely, just your thoughts on this: The Ontario College of Art has announced that it will only employ women in order to historically right the situation that has been bad for a long time. Do you think this is the right direction to go?

**Mr Jain:** I think that's the wrong thing to do. In my view, we should not expect to change the workplace overnight. I think the qualifications should be considered. I think the people who are qualified, no matter what, whether they're white or non-white—I think what I am saying and what this bill should be doing is that opportunities should not be limited only to white males, which has been the case in the past. What this bill should be doing is to provide the opportunities so that the pool of applicants the employer is forced to consider is not just white males but also women and the other groups. That's what I'm saying.

**Mrs Witmer:** Thank you very much for your presentation, Professor Jain. You mentioned the preamble as being a positive feature of the act.

**Mr Jain:** I mentioned that because I think in the preamble there is systemic discrimination that has been acknowledged. The unemployment rates and the in-

equality that exist for the groups have been acknowledged. I think that's a very important move and should be. I would like to see, in the final paragraph of the preamble, systemic discrimination inserted, which is there above that, but yes, I'm quite happy with the preamble.

**Mrs Witmer:** I guess I would have to disagree with you. I find it a very negative preamble and I think that if we're looking for cooperation between the employer and employee community, we should be making some positive statements as opposed to what's happened in that past, what it is that we're looking for in the future. I don't see it as being positive, I guess.

You mentioned that you believe the definitions should be defined in the act. Are you happy with the definitions as they are at the present time?

**Mr Jain:** The act does not define; the regulations do.

**Mrs Witmer:** That's right. Are you happy with the definitions in the regulations?

**Mr Jain:** I think there are going to be challenges to those regulations, the definitions. They are in the federal act. As you know, the two banks have taken the Canadian Employment and Immigration Commission to court.

**Mrs Witmer:** Yes, I'm familiar with that.

**Mr Jain:** That is why I suggested in my presentation that they ought to be very clearly specified. Also, there should be a standard questionnaire so that people don't object, so that people know ahead of time, so that all employers know exactly what to do, and that is the failure of the employment equity act at the federal level.

**Mrs Witmer:** Okay, just one question: If you had one recommendation for the government as far as making a change is concerned, and if you could persuade it to do that, what would it be?

**Mr Jain:** Have mandatory goals and timetables—the word "timetable" is not mentioned in many regulations—and that should be with strong sanctions to encourage employers to move towards that, because what if the affirmative action doesn't work? That's when the Police Services Act—there had to be the threat. Now, have you heard any chief of police saying that they are against employment equity? All of them are against it. That's because the governments and the opposition combine to bring a very strong provision—two sections of the Police Services Act, 23 and 48—that goes into it very strong, and now you have a very positive environment. That is what I'd like to see here.

**Mrs Witmer:** I'm concerned about your word "threat," because I think we should be concentrating on working together cooperatively, and I don't think we should be threatening people.

**Mr Jain:** I think I am saying that a carrot-and-stick approach would do a better job than simply threats. I

agreed with Mrs Caplan earlier that there ought to be educational—OTAB should take some positive steps, spend some money, so that the groups can bring themselves up to qualifications, those that are not there.

**Mrs Witmer:** I guess I would agree with you. I think the key is that we educate and train people so that they are able to assume the job opportunities.

**Mr Jain:** I am in the school of business and I should not be saying the things I am saying, but I have long experience there. You see, in marketing, in production, managers set goals and timetables and they're judged by those goals and timetables. Why should it be so different in this area? That's what I'm saying.

**Mrs Witmer:** Thank you.

**The Chair:** Sorry we ran out of time.

**Mr Winninger:** Professor Jain, I certainly appreciate your support for the general thrust of this bill and some of your specific recommendations for change. I think you've been very forthright with this committee and I would suggest that Mr Curling, at some point, has to come clean on how he would like to see this bill changed, because he agrees with people who say it goes too far and he agrees with people who say it doesn't go far enough. But his government never introduced a bill, and I think it's about time that if they're unhappy with our bill, acknowledging that we at least introduced progressive legislation, he come clean on the changes.

I'd like to come back to your point, though, about some of the requirements that should be made mandatory. Quite clearly, there is a large component of voluntary compliance built into the framework legislation and also into the regulation. There may be companies that will act in good faith. We heard yesterday from IBM, for example, of the great strides it has taken to implement employment equity, and it looks to me as though we don't need a big stick to beat them over the head.

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But under the legislation, we do have the auditing function of the commission, we do have a body above that that's mandated to make orders where companies don't carry out their employment equity plans or don't even file employment equity plans. Of course, the commission can require that plans and reports be filed by these companies.

I would suggest to you, on the one hand, we need to respect the diversity of these companies and the need for flexibility. On the other hand, we need teeth in the legislation to truly make it progressive. I think it's that fine balance that we have to strive to achieve, and if you have any constructive suggestions for improving that balance, we'd be pleased to receive them.

**Mr Jain:** I think what this bill does and the regulations do is to go back to the weaknesses of the Ontario Human Rights Code. We have learned from the federal

employment equity legislation, voluntary efforts do not work. IBM's statement yesterday, one token company does not make for what the industry does, and you also saw the opposition from others.

Unless there is a consistent, standardized requirement of all employers, they're not going to do it. I cited to you a number of studies of employers across this country where I was of the opinion the voluntary effort will work, and it hasn't worked. They have made no progress at all, despite seven years of employment equity legislation.

**Mr Winninger:** Your scholarly research is certainly quite helpful and will serve to refute some of the arguments we heard yesterday, that discrimination is no longer a problem in the workplace.

**Mr Jain:** That would be quite a shock to me if that is true. In my research, that is not true. Discrimination is well and alive and there is no question in my mind, and it's just not my subjective opinion, it is proved by a number of surveys and my own studies.

**The Chair:** Ms Carter, one final question.

**Ms Jenny Carter (Peterborough):** First of all, I see that your presentation to us was just an executive summary. I wondered if you had a more complete version with maybe some more facts and figures that would be useful to us in refuting some of the allegations that we've heard and no doubt will hear more of.

**Mr Jain:** Sure.

**Ms Carter:** One very specific question. You are suggesting that all plans be filed, that this be mandatory. I believe with the federal legislation there's a relatively small number of companies involved, say in the hundreds, but with this legislation there would be many, many thousands of companies that would have to file and if all these files were to be reviewed, this would be a large bureaucratic undertaking and probably very expensive. I'm just wondering if you have any comments on that.

**Mr Jain:** The Equal Employment Opportunity Commission which administers the Civil Rights Act, Title VII, in the United States has hundreds times more employers in its jurisdiction than what we are talking about, and they require the filing of these plans. I think what it will do is, not necessarily for audit purposes, but for public consumption, employment equity, as much as a public act, if the public has no access, you will see no pressure.

It says here, and it's an empty promise, that you can go before the Employment Equity Commission or tribunal. On what basis? I don't have any facts. And if those facts are not public, I am not able to go. This is what I'm talking about.

**Ms Carter:** So you're saying that it's not so much that the government needs to go through that information as that it needs to be available to anybody?



**Mr Jain:** That's right.

**Ms Carter:** I see.

**Mr Jain:** I think that is a very serious weakness in this bill. So I would like to see that.

**The Chair:** Mr Jain, we've run out of time. We appreciate your presentation. It was very informative.

**Mr Jain:** Thank you very much.

#### COMMITTEE ON THE STATUS OF WOMEN

**The Chair:** I'd like to call upon the city of Toronto Committee on the Status of Women, Barbara Haber. You have half an hour. You've seen the previous submission; you know how it goes. Please begin any time you are ready.

**Ms Barbara Haber:** Good morning. I'm here on behalf of the Committee on the Status of Women. We are made up of women in the community as well as women members of Toronto city council, with co-chairs from council and the community. We work from a feminist perspective to maintain, improve and advocate an equitable quality of life for all women, including women of colour, native women, women, women with disabilities and lesbians, living in the city of Toronto.

The committee was formed in June 1991 by Mayor Art Eggleton as a means for women to have input to the decision-making process at city hall.

We hold public meetings monthly. Current topics being discussed include the impact of streamlining activities on women civic employees, housing and women, and violence against women. On this last issue, we met with representatives of the Metropolitan Toronto Police Force to discuss its relationship to women in the community as victims of crime and suspected criminals. Twenty-five recommendations of the committee are currently being considered by the police force.

The committee welcomes this opportunity to express our views on the provincial Employment Equity Act. The Committee on the Status of Women extends our congratulations to the government of Ontario for proposing meaningful legislation that will address the barriers to full labour force participation by women—all women—whether white, from a racial minority, native or disabled.

Your timing couldn't be better. Economic restructuring is having a severe impact in all sectors, but especially on members of designated groups, by increasing the disadvantage that the designated groups already face. Layoffs, downsizing and bankruptcies have created record levels of unemployment.

This bill brings employment equality rights for women and other designated groups to the fore just when they are needed most. And it is building bridges. The provisions of Bill 79 are consistent in many ways with recent changes in labour relations legislation and changes to other collective bargaining and employment laws, by mandating joint labour-management planning

committees and employee consultation.

This bill is good for the province, it's good for labour, it's good for employers and, most of all, it's good for women.

Despite the public relations work that has been undertaken by the Ontario women's directorate, the Ontario Anti-Racism Secretariat, the Office for Disability Issues and others promoting equality rights in employment for members of designated groups, statistical and anecdotal evidence clearly points to the desperate need for this legislation.

The achievement of employment equity in Ontario is vital. Demographic trends show that members of designated groups will comprise the majority of the Ontario workforce by the year 2000. But now, in 1993, women in the labour force are playing a game of catch-up with men. They have comparable or superior levels of education, but earn less. They continue to be concentrated in few occupations, earning 67 cents for every dollar earned by men. Over 80% of women working in Ontario in 1989 were segregated in low-paying occupations in the service sector, such as services, public administration, trade, finance, transportation and communications, where women working full-time make 53.2% of the average man's salary in that sector.

The most significantly disadvantaged groups, those facing double or triple disadvantages—native women and women with disabilities—identify biased attitudes as the major barrier to their full participation. Racial minority women, while having high workforce participation rates, continue to earn disproportionately low salaries. In the clerical field, where 30% of racial minority women are employed, racial minority women with university degrees earn approximately 32% less than men with university degrees. This is despite the fact that these women hold degrees at twice the rate of men. Publications by the Ontario women's directorate illustrate these and many more inequities.

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This bill is an investment in the future of Ontario that will ensure effective use of the province's diverse labour force. The economic potential for the province will be tremendous when we begin capitalizing on the human resource potential that is being squandered through ineffective policies, practices and attitudes that are rooted in the past.

Bill 79 is good for labour because of the emphasis on a cooperative approach to employment equity. Collective action has already been taken on these issues in some sectors, for instance, the ground-breaking Respect at Work sexual harassment policy achieved by Toronto Hydro. In other organizations, where there are adversarial labour relations, employees will benefit by the provisions under this bill to undertake employment equity as a joint labour-management cooperative strategy.

However, in prescribing the composition of the joint labour-management committee, the act is silent on the need for representation of members of designated groups. The committee recommends that bargaining agents and employers be obliged to make every effort to ensure broad representation of members of designated groups on the joint committee.

The Committee on the Status of Women is concerned also that non-unionized women will not have the same rights as unionized women to work with management in their workplaces developing and monitoring their employment equity plan. The committee recommends that the act require the appointment of employee representatives to a joint working committee in workplaces where employees are not represented by bargaining agents.

There are many possible models that the government could have adopted in this bill. The government is to be congratulated for introducing requirements and regulations that, despite the cries of quotas and government interference, are realistic and allow firms to set goals in proportion to the opportunities for change like other business objectives they set on a regular basis. Firms have the independence to implement the changes that make the most sense to them, will receive credit for reasonable efforts to meet their goals and have been allowed adequate lead time to prepare. In addition, the requirements are not excessively expensive to implement.

However, this is not going to happen without a major educational venture on the part of the Employment Equity Commission and other directorates in the Ministry of Citizenship. It will be imperative to ensure an adequate financial investment to ensure that information is made available to help firms get educated and get started.

The committee also recommends that numerical goals be entrenched in the act, similar to the requirement to conduct an employment systems review. As one of the obligations, numerical goals will be accorded the same importance as the review of employment systems.

For women, this bill has been long awaited. This government has acknowledged that women's equality rights in employment are not being met and has chosen to back this up with legislation aimed at making systemic changes in how employees are hired and treated on the job.

Women have been given the hope that the barriers that for too long have kept women from realizing their full potential will be struck down.

It is vitally important that mandatory employment equity legislation be passed. It is the only way women's rights to equality in employment will be achieved.

But no bill can please all of the people all of the time, as you well know. A concern of the Committee on

the Status of Women is the omission of a regulation on the issue of corporation seniority, establishing seniority across bargaining units, for promotions.

This issue constitutes a significant barrier for women wishing to compete for non-traditional occupations in organizations where separate bargaining agents represent predominantly male and predominantly female occupations. This issue is the subject of a human rights complaint and is currently being considered by the Ontario Human Rights Commission.

The complaint was filed by alumni of Bridges, a city of Toronto program, members of CUPE Local 79, inside workers, against CUPE Local 43, outside workers, and the city. The complainants are women who prepared themselves for positions traditionally held by men in trades, technical and labouring occupations under a specific, special city of Toronto program, namely, Bridges.

When these qualified women from Local 79 applied for promotion to Local 43 positions, they faced the provisions in the Local 43 collective agreement that required that all Local 43 members, even those with minimal seniority, be considered ahead of any other applicant. Some of these women had as much as 15 years' seniority with the city of Toronto, yet were prevented from promotion to another position with the same employer in the same union, CUPE, by those restrictions.

We recommend that the act expand the definition of seniority rights to require the establishment of company-wide seniority.

The committee is also concerned about enforcement measures in this legislation. Bill 79 has allowed every opportunity for employers, bargaining agents and employees to report on any breakdown in the development or implementation of the employment equity plans, and it has provided opportunities for resolutions of disputes. However, when all attempts to gain compliance with this legislation have failed, a fine of \$50,000 is merely a slap on the wrist for some of the major employers and unions in this province. Fines should be used as a last resort in this type of legislation but should be a strong deterrent to organizations that are bogging down the process.

We recommend that fines be levied on the basis of \$100 or a similar amount for each employee whose interests are not served by the failure to comply with the legislation, with a minimum fine of \$50,000. This should be levied on unions and employers alike, with the responsibility for determining culpability on the tribunal.

The Committee on the Status of Women salutes the government of Ontario. Through Bill 79, they have acknowledged the need for fundamental change in Ontario employment practices and have brought in a bill



that will achieve this in a reasonable period of time. With the recommendations of our committee and other equity-seeking groups, the province will not only be the first to introduce such sweeping legislation but will be the first to achieve fairness in employment for all workers.

In summary, the following are the main conclusions and recommendations of the Committee on the Status of Women:

(1) The Committee on the Status of Women recommends that bargaining agents and employers be obliged to make every effort to ensure broad representation of members of designated groups on the joint labour-management committee.

(2) The committee recommends that the act require the establishment of a joint employee-management committee in workplaces where employees are not represented by a bargaining agent.

(3) The committee recommends that numerical goals be required in the Employment Equity Act, similar to the requirement to conduct an employment systems review. As part of the regulations, numerical goals are not accorded the same importance as the review of employment systems, yet are just as crucial to the achievement of employment equity.

(4) The committee recommends that the act expand the definition of seniority rights to require the establishment of company-wide seniority.

(5) The committee recommends that the fine structure for failure to comply with the legislation be modified. We recommend that fines be levied on the basis of \$100 or a similar amount for each employee whose interests are not being served by the failure to comply with the legislation, with a minimum fine of \$50,000. This should be levied on unions and employers alike, with the responsibility for determining culpability on the tribunal.

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**The Chair:** Thank you, Ms Haber. Would you introduce your colleague, please.

**Ms Fiona Haapalehto:** Fiona Haapalehto.

**The Chair:** Thank you very much. Five minutes per caucus.

**Mr Tilson:** I think Mrs Witmer and I each have a question. I understand and congratulate you on your continued efforts to improve the status and life of women. I understand that. A bill such as this, as this committee is finding and as you can well understand, is very complex because it deals not just with women but with at least three other groups.

There's an article that was put forward in Maclean's about a year ago which talked about a fallacy of this type of legislation, that is, that people live many lives in one, whether you be an aboriginal, whether you be a woman, whether you be a visible minority, whether you

be a disabled person. I'd like to quote from the article because it expresses a concern that has been given to me in the past, and I'd like your comments. After reading this, my question to you is: How far should a government go in putting forth legislation such as this, when it knows it may be solving one problem yet creating other problems? To quote from the article:

People "live many lives in one. They are wives, husbands and daughters as well as ethnic group members. The black woman whose white husband is turned down for a promotion loses; the wife whose husband's business is ruined by this expensive program loses; the wheelchair occupant who replaces a female receptionist with three children creates another injustice and set of victims."

Then the article goes on, but that was a brief paragraph which I think can illustrate, for example, to take the issue of a woman, that a woman does have sons, a woman does have daughters and a husband or other people who are connected to her, and by mandating rights given to that woman—I take your example because that's who you are supporting, and again I congratulate you on that. But by doing that, that in turn can quite conceivably, if you look at this article, create even worse problems, whether it be racism or problems for the handicapped or problems for the aboriginal. Of course, you have acknowledged in your own presentation about more rights for the aboriginal woman.

My question is, how far should a government interfere in our lives in trying to solve a problem that may indeed cause other problems?

**Ms Haber:** First, I don't believe this bill is going to take jobs away from anyone by giving jobs to women. I think the bill is going to give jobs to those who have merit.

**Mr Tilson:** That isn't what the bill says. It has no mention of merit anywhere in this bill. Subsection 50(1) even says that there will be certain percentages of these designated groups, and "If you don't hire those people, employer, you're in big trouble." That has nothing to do with merit. That's the problem it's going to create for your white husband or your disabled son or your aboriginal nephew or whatever, down the line we may go.

**Ms Haber:** I think the goals, the timetables, are meant for people who have equal ability to apply for that particular job. That's how I read the bill.

**Ms Harrington:** It's opening up opportunity.

**The Chair:** Mrs Witmer, one final question.

**Mrs Witmer:** We talked about equal opportunity, and that's where I'd like to go. I personally believe, and I've been involved in education for a long time, that one of the reasons the four designated groups have not been able to access employment is because they have not had the appropriate or necessary educational and training opportunities.

This bill does not speak to that, and I think that is an area this government needs to be concentrating on. I would agree that people need to be hired on merit, that we need to have the best-qualified individual for the job, but, as you know, women have been held back because they haven't had the education and the training, haven't had the child care support. There are many reasons why women haven't been able to make the progress. What would you recommend that the government do to help alleviate and overcome the barriers women face at the present time?

**Ms Haber:** There are a lot of barriers that women face, but I want to mention again that we have a lot of women in the workforce who have the same education and the same qualifications as the rest of the community and they aren't being hired. As I mentioned in my report, women are educated, there's no doubt about that, and they are certainly capable of holding on to jobs, but the opportunity to get into the workforce is more difficult for them.

**The Chair:** Thank you, Ms Haber. On to government members; there are three speakers, Ms Carter to begin.

**Ms Carter:** Thank you for your supportive presentation. You've raised the question of the need for company-wide seniority rights, and the case that you are involved in does highlight the inequities that can be created by internal divisions. Could you enlarge a little for us on how company-wide seniority rights work and how they would protect the interest of employees?

**Ms Haber:** I don't know if I can really highlight that, but we're concerned with the barriers and we want to ensure that there is negotiation between all affected bargaining units. That's what we're most concerned with.

**Ms Carter:** How would that work in the particular case you're involved with?

**Ms Haber:** Fiona, could you help me on that one?

**Ms Haapalehto:** In this particular case between CUPE Local 79 and CUPE Local 43, we would foresee that women who have seniority with the employer in the union would be able to bid on jobs in the other bargaining unit and would be considered on the basis of their seniority in the other bargaining unit within the same union.

**Ms Carter:** So that would, in effect, mean company-wide seniority because you would be merging the two parts of the union?

**Ms Haapalehto:** Correct.

**Ms Carter:** Do you have any enlargement on that concept and how it could protect the interests of employees?

**Ms Haapalehto:** The barriers for women who have the ability to do the jobs—and what we're talking about in Local 43 are higher-paying jobs because they are

outside jobs and because that local has negotiated the pay scales. Traditionally, the trades, technology and operational positions are higher-paying positions. Women who are working on the inside are being paid less, so they look at the opportunity to gain greater income by moving to the jobs that are outside. They have the ability to do it. These jobs do not require a large degree of education. They're generally labouring jobs. Some of them are technical jobs, but that technical training can be gained through various means of training.

These women do have the qualifications to do the job. I don't think it means that they would not be able to do the job as well as a man who has been in Local 43 for less time. They have the ability to do the job, they have the qualifications, and the only barrier to them moving into that job—and I continue to stress that it's the same employer at the same union—is just a different bargaining local within the union that causes them not to be able to qualify for that. Men who have been in the job for two years would be considered ahead of the women who have been in the job for much longer.

**The Chair:** Mr Fletcher, one final question.

**Mr Fletcher:** I agree with you about the education. Education should be paramount whenever we're going out. In section 41 of the act one of the functions of the commission is to educate the public about employment equity, so there is going to be some education coming through the act itself. I've heard what people say, "There's no education," but it is there in the act and it is mentioned.

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I think also one of the things we have to look at is the way we educate, not just through the act but also with groups such as your own, making sure that your membership knows what the act is about and what is going in. I think we can spend a lot of time saying, "The government should; the government should," when in fact we can do it ourselves. I know you will be spreading the word in your group. It just boggles my mind about how much can the government do as far as education is concerned and where do we expand on the education. Do you have some ideas on that?

**Ms Haapalehto:** It's very important for the education that the requirements of the act—when you bring in legislation like this, and I'm sure as you're finding in the presentations, there's a lot of misunderstanding about what the intent of the legislation is. I think that, first and foremost, has to be where the emphasis is in ensuring that employers know what the requirements are, what the expectations are and that there are very clear guidelines issued for the employers so they're not going off on a tangent trying to do something that is not required of them under the legislation, thereby negating what they could be achieving by spending their efforts



in an area that would be unproductive.

**Mr Fletcher:** That's why the commission has the power to educate and also the reporting to the commission.

**Mr Tim Murphy (St George-St David):** I have a couple of questions, if I can, regarding your recommendations. Thank you, first of all, for your report. The co-chair of your committee is in fact a councillor in my riding, so I know her quite well.

One of the questions I have is related to your third recommendation regarding numerical goals being required in the act. I was wondering whether you meant that specific goals and targets be put in there, like the actual numbers, or what the content of your recommendation 3 was.

**Ms Haapalehto:** No, we don't foresee that specific numbers be prescribed in the act. The requirement, though, to set goals and timetables should be accorded the same importance as the requirement to conduct an employment systems review. We feel it is very important that that be undertaken.

**Mr Murphy:** I'm having some difficulty understanding recommendation 4. That's probably my fault. The question I have is: Are you saying that in essence we should change the current system of seniority we have in workplaces and expand it so there isn't union-specific seniority rights, but rather company-wide seniority rights, regardless of which union you belong to?

**Ms Haapalehto:** No, I think what we're saying is that we agree with the CAW comment to your question on this issue, that where there are barriers to occupational choice within a workplace, those barriers be struck down.

**Mr Murphy:** I guess that's the concern I have. The very example you raised—in essence, there's a provision in one union collective agreement that essentially is prohibiting women in another from gaining access to those jobs. What I'm wondering is how your recommendation fixes that problem.

**Ms Haapalehto:** Perhaps the recommendation doesn't go far enough in that it should be expanded to include a negotiation where the seniority provisions result in barriers.

**Mr Murphy:** Just a comment on number 5. I'm wondering whether you've thought about the sort of almost charter implications of this because, as you well know, the bill as drafted has a reverse-onus provision in it, which is that if the commission concludes that you've failed to meet your plan and timetable, then you have to prove as the employer that you have matched it. Basically, the presumption is that you've failed unless you prove otherwise.

My concern is that there would be an unfair burden in a sense, in a fine context, of imposing a fine, of saying, "You could be fined unless you prove that you

were innocent." I have a concern about that and I wonder if you could comment.

**Ms Haber:** We're hoping that the amount of the fine and the idea of a fine should somehow reflect the number of employees in the company.

**Mr Murphy:** No, I guess I'm focusing more on the idea of the reverse onus. We've recently had somewhat of a discussion about that issue with the Human Rights Commission. I'm just concerned about its application in the fine context here, and I'm wondering if you're expanding that and applying it to the failure to comply with a plan. Would you then recommend that the reverse-onus provision be taken out? Maybe you haven't considered that aspect.

**Ms Haber:** No, not at all.

**Ms Haapalehto:** We will consider it, though.

**Mr Murphy:** The one other thing, and I think you've picked up on it, I haven't found in fact where the unions are given responsibility in the same sense the employer is in relation to that cooperation around negotiating between unions. I think it's section 14 where it says you shall sit down and talk about these and you go to the tribunal. Later on, there are sanctions against the employer if you fail to meet time lines to some degree. I haven't seen the sanctions against the union, and I think that your recommendation here fits into that. I think an important part, if it's going to work, is that if you're going to have the rights, you should have some of the responsibilities. That was more of a comment than a question, unless you do want to comment on that.

**The Chair:** I want to thank you both for the submission you made here today.

TAMIL EELAM SOCIETY OF CANADA

**The Chair:** The Tamil Eelam Society of Canada. Welcome. It would be helpful if you introduce yourselves. I don't want to mispronounce your names.

**Mrs Selvam Sridas:** Sure. I am Mrs Sridas, the program coordinator.

**Mr Ram Selvarajah:** I am Ram Selvarajah, a summer student working on the program.

**The Chair:** You have half an hour. Please begin.

**Mrs Sridas:** Do you want me to read the whole thing or just brief it?

**The Chair:** We'd prefer that you not read the whole thing because it would probably take a long time. Perhaps some highlights would be better, if you can, so that it would allow for questions and answers. We'd prefer that, but if you want to read it, that's your choice.

**Mrs Sridas:** We appreciate, at least at this point in time, a bill to recognize that there is some discrimination going on and to prevent it in order to be fair to all the minority groups, so that women, aboriginal groups and all four groups mentioned here will be given equal

opportunity. So we should thank the people who have originated this bill.

There are certain shortfalls in the bill that I should say:

(1) The police force has been taken away from the bill. We would like to incorporate them also into the bill so that everybody, without any exception, will be given equal opportunity under this bill.

(2) The definition of "designated group" is not properly done; it's a little vague. "Designated group" meaning, say, for example—

**Mr Selvarajah:** We have left the designated groups you have mentioned: aboriginal people, people with disabilities, members of racial minorities and women. What we have a problem with is that aboriginal people are defined by, I believe, the native act, but people of racial minorities, how are we to define that? It is normally generally understood that we take racial minorities as people of colour, and we tend to divide white and non-white and group the non-white as minorities. We also feel there are minorities probably within the white. I don't understand how it could work, but there are Scots and there are the English and Ukrainians and all that. So we want to know how you are going to say that this person belongs to a racial minority.

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**Mrs Sridas:** Also under "women," it has to be defined what the proportion of women means. If you say, "This percentage of women should be taken in," out of women, how many are representing each? So a clear definition has to be given for that.

Third, the small employers: The exemption of small employers will lead to a lot of confusion in the sense that you are excluding quite a large number of employers in that category, meaning around 50% of the employers will fall under that category. There will be two different types of employees: One will be protected under the act and the other one will not be protected under the act, right?

So in that case, we are going to face two different categories of employees. Under the employers, there will be two different categories saying one will not be guided by this bill and the other one will be guided by the bill. So the solution that we are giving for that is to take away "50 and above." So if you include all the employers, then that problem will not arise.

Pardon me for introducing this person, Mr—

**Mr Nadarajah Sivakumaran:** Nadarajah Sivakumaran. My apologies for being late. I went into the wrong building.

**Mrs Sridas:** You may continue the paper; fourth.

**Mr Sivakumaran:** Our submission, to put it very summarily, very briefly, is that the lawmakers, in this instance the Legislative Assembly of the province of Ontario, have quite properly identified and recognized

that there is a problem, namely, that there is a discrimination against these four designated groups in finding employment, retaining employment and being promoted in employment. The problem is really a matter which concerns our group as well.

In fact, in the preamble, the Legislative Assembly has further recognized the causes of that problem as well. They say the causes are "both systemic and intentional discrimination." Hence, they proceed to enact this legislation with the purpose of, in their own words, "the amelioration of conditions in employment" for the four groups "in all workplaces in Ontario."

Respectfully, our submission is that a problem must not only be solved but must be solved adequately and well enough so that it may not recur. Our submission is that this piece of legislation, Bill 79, does not solve adequately the problem that is affecting this group.

Therefore the solution envisaged may not meet the requirements intended to be met. However, if the bill has to go through, we have pointed out what amendments we would propose in spite of its shortfalls.

I believe my colleague wants to address the small employer.

**Mrs Sridas:** You can go on.

**The Chair:** That's the first three parts of the summary of your submissions.

**Mr Sivakumaran:** Very well. What actually the bill stipulates is a voluntary obligation on the part of the employers. It makes mandatory a list to be posted, but at the same time it makes it voluntary and obligatory for the employers to prepare the list about the employment goals and the timetables, which is actually leaving it for themselves. Our submission is that those things must be made mandatory.

Yet again we find defences available to the employers, like "all reasonable efforts being taken" or "reasonable progress being made." These two defences are made available to the employers, who can always conveniently avoid action being taken against them. It defeats the purpose of the bill. Therefore, we urge that those defences should not be made available to the employers. That is problem 5.

In problem 6 there is a long delay, we find, in implementing employment equity. We recommend that it be shortened.

The advocacy groups must be given further opportunity to be consulted, as mandatory, by the commission, in light of the flouting, or the code becomes very irrelevant for the minority groups.

I believe those are our submissions unless you want to ask us some questions about them.

**The Chair:** Yes, I'm sure members do. We'll begin with the government members, five minutes for each caucus.



**Mr Fletcher:** Thank you for your presentation. One of your points was interesting—and I asked the same question when we were having some discussions—about how you tell who is from a minority. If a person comes from Poland, are they a minority? I agree with what you're saying. How do we go about changing that? What kind of definition would you give to "minority" if we could have a definition that would work. I know it's a tough one; we wrestled over it too.

**Mrs Sridas:** It's very tough.

*Interjection.*

**Mr Fletcher:** Alvin has the answer to everything. Mr Curling has the answer to everything. He'll be able to do this. He agrees with one side one day and disagrees with another side the next day. It's a good thing there aren't three sides to a fence, Alvin.

I'm sorry; as far as the definition for "minority" is concerned, where do we go?

*Interjections.*

**The Chair:** Don't be distracted by the noise. Continue.

**Mr Selvarajah:** We have not been able to come up with a definition of "minority" for ourselves, simply because of the same reasons you are citing. That's why we have asked this question, to see how you are going to say that such a person belongs to a minority group in this legislation. We see that as there's no clear definition of a minority group in the legislation, I don't see any group being affected by the legislation.

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**Mrs Sridas:** One way you could look at it is, if you take the numbers in the population, depending on the population, you can see what is the minority there. This is just a suggestion, that with the number you can say minority or majority. I am unable to give any other solution.

**Mr Fletcher:** In the draft regulation it says, "member of a racial minority" means a person who, because of his or her race or colour, is in a visible minority in Ontario," and then it excludes aboriginals from that.

**Mrs Sridas:** But the colour is not the only thing.

**Mr Fletcher:** No, I agree.

**Mrs Sridas:** The colour is not the only thing to say, because there are white people belonging to minorities. Tomorrow the Jewish community may come. It's not the colour alone. Colour is one of the factors. It could be the numbers.

**Mr Fletcher:** In a geographic area where the employer—

**Mrs Sridas:** That's right, and it could be a number. That's all we could say.

**Mr Selvarajah:** In a place like Toronto, I would consider everybody a minority. It's a 51% minority in Toronto. But going outside of Toronto to the west or the

north or the eastern part of Ontario, we tend to find minorities there of whom we can say, "This is a minority," simply because there is a Scottish- or a German- or a something-originated population that is the majority there.

**Mr Fletcher:** Thank you for your presentation.

**The Chair:** Mr Winninger, one final question.

**Mr Winninger:** Just briefly, in determining a racial minority the prime criterion is self-identification, as you know, but there may be instances where there's doubt, and that's when the commission can provide guidelines and assistance to use during the consultation and communications that might be of assistance to communities such as your own.

Also, you deal with the issue of small employers. We have to respect that not all employers, particularly small employers, have adequate resources to do the necessary planning, so in the absence of well-defined employment practices it might be more problematic for those very small employers to deal with the implications of the legislation. We naturally encourage voluntary compliance, and when those companies grow to a certain level of employment, they fall under the ambit of the act anyway.

**Mr Selvarajah:** But I have a problem with that in the sense that when we have 50 employees, I find it difficult to say that employer is a small employer. When you are having 50 employees, your payroll must be significant, which means you're generating quite a lot of revenue, generating revenue of at least \$1 million. I find it difficult to say that is a small employer.

We may define small employers to be family-owned businesses run by family members. That is quite acceptable. If a person has a small corner store, we can't say, "We want you to implement employment equity" there when he has only two employees there. That's family-owned. We should allow that. But I don't see any family-owned business being managed and run by everybody belonging to a family in an environment where there are 50 employees on the payroll.

**Mr Winninger:** I certainly appreciate your point of view.

**Mr Murphy:** Thank you very much for your excellent report. I appreciate the effort you put into it. I know the Tamil Eelam Society has worked very hard against discrimination and I very much appreciate that. I have one question and then I'm going to turn it over to my colleague Mr Curling, who knows everything, of course.

You've asked for an enforceable definition of "reasonable progress" and I'm wondering if you had a suggestion as to what you thought that would be, in your solution to problem 5 in your written report.

**Mr Sivakumaran:** At the moment we do not have any reasonable definition as such. It might involve a bit

of time. If the commission gives us time, we might be able to give a definition in writing in due course.

**Mr Curling:** Regardless of what he says about knowing everything, the fact is that I'm seeking to know. That, I think, is where there is confusion is.

I think your presentation, as written, has really highlighted some of the concerns that have been expressed by many presenters before, and you put it so well.

As a matter of fact, let me focus on number 3, where you talk about the exemption of small employers with less than 50. I fully agree with you that the government and the bill are exempting a large number of people who are being subjected to discrimination in access to workplace. Because of the bill's emphasis on paperwork, they're saying these organizations haven't got enough resources to do the paperwork and that is why they want to put that exemption in that respect. But if they were emphasizing people, they would realize that a large number of people have been exempted. I would encourage you to continue to lobby the fact that employers under 50 should be included in that bill. I support that aspect of it. I just wanted to make a comment on that.

Let us examine a bit, because especially in your group, where you speak about the definition of the designated group, you're talking about a subgroup. As a matter of fact, the Stephen Lewis report, which is very much embraced by the government and is an excellent report in some respects, spoke specifically about subgroups, about blacks especially, who have been subject to certain types of discrimination and that programs should be put in place to make sure that discrimination ends.

I remember at one stage that Pakistanis were being beaten in the subway and things had to be done. The Walter Pitman report came out on how to deal with that.

Are you saying this is in the same consistent way, that the subgroups should be looked at, specifically if we're talking about visible minorities and who they are? Is that the direction you want to go?

**Mrs Sridas:** I think so, yes.

**Mr Sivakumaran:** Quite frankly, that's what we feel. We're feeling that way as well. Speaking with racial minorities, it has become an inescapable fact that all these things had to be reckoned with.

**Mr Curling:** Do you feel that some of the concerns you have could be dealt with at the Human Rights Commission? If it can't be dealt with there, do you feel that the employment equity bill will be able to deal with those concerns you have?

**Mr Sivakumaran:** Over time, we have found that Human Rights was quite inadequate because it doesn't initiate a system. It only receives complaints and goes into the complaints. It doesn't require an employer, or

anyone, for that matter, to adopt a system which is free of discrimination. It only deals with matters when they are taken there as a complaint, which is inadequate.

**Mr Tilson:** I listened to the remarks of all three of you as you were speaking and I must confess that, although unintentional I believe, I think you've shown in your remarks exactly how unworkable this legislation can be.

There's all kinds of discrimination in our society, whether it be age, colour of skin, gender, nationality, language. There's all kinds of discrimination made outside the workplace and inside the workplace. Many of those discriminations actually have nothing to do with the various groups that are mentioned in this bill. There are other kinds of discrimination, as I think you've said, that apply to whether you're employed or whether you are promoted. Age is one. In fact, until recently religion was one. In many cases there's the issue of religion, and there may be others that I haven't even thought of, so it is difficult.

Then some of the questions that you raised: What percentage? We're becoming a very cosmopolitan society. Colours of skin are starting to blend and all kinds of things are happening. When is one considered an aboriginal? What percentage of one's way of life? It's a very difficult and complex society, and I think the point you raised is, how are you going to define these things?

Whether in the bill or in the regulations, there's no specific definition or guidelines. All we have now is self-identification. Anyone can say they're a visible minority, whatever that is, and anyone can say they are an aboriginal; you could have one tenth percentage of your blood as an aboriginal. It's a very complicated and, I believe, unworkable process. I'd like you to comment.

**Mrs Sridas:** I don't think it's unworkable because it's only a stepping stone. It may take about 10 years to become an ideal thing. It's hard to put it, but this is a very starting stage and we may improve the bill. We can go on and on and improve it over a period. I don't think it's a useless bill. It's very good.

**Mr Selvarajah:** Mr Tilson, as a respected member of Parliament—I'm just a student—you say this is an unworkable bill. I agree with you, but where do you recommend we start? Where do you recommend we put the first stone? You identified lots of other discrimination. Why don't you ask the government side to include those forms of discrimination in this bill? Why do you say we should get rid of it?

**Mr Tilson:** I'd love to answer your questions. The very first thing I would do and a Progressive Conservative government would do, with respect to the discrimination you have referred to, is that we would ensure members of designated groups have access to education and training programs. There is not one of those that is



being put forward by that government. That's the very first thing we would do.

**Mr Selvarajah:** Mr Tilson, I'm not asking for me to be employed because I'm a person of colour. I'm asking to be recognized on the basis of my education.

**Mr Tilson:** I'm glad you're saying that, because that isn't what this bill says.

**Mr Selvarajah:** I am saying that we have the education. People of racial colour does not mean they don't have education; they have education. I work for a security company that has over 30% of the company staffed by Sri Lankans, and 50% of those Sri Lankans have at least a university degree and they're working as security guards. I see that as discrimination. I do not see that as people not having education to go ahead with some other form of job. I see that as discrimination.

**The Chair:** Ms Witmer, I will allow a quick question.

**Mrs Witmer:** I wanted to continue because I think you've raised a very significant point. The point I want to make is based on my own personal experience, because I'm an immigrant as well. One of the problems my parents faced and other people have faced when they have come to this country is language. Written and oral skills prevented them from accessing the jobs they had the education for. Is that a barrier for your community and how can that be overcome?

**Mr Selvarajah:** Ms Witmer, in my community in Sri Lanka, the university education is done in English. I do not see a degree-holder having a problem of communication either in the form of written or spoken.

**Mrs Witmer:** For your community; but certainly for other individuals who come here, language is a barrier. But you're saying—

**Mr Selvarajah:** Language is a barrier for people with not much education. We're looking at higher jobs. We are not asking for a quota system. We don't want people to say: "Okay, Sri Lankans represent 95,000. Because you represent 95,000 and you're 10% of it, you get 10% of the jobs." No, I don't want that, because I know in my community we have the people with education who are equally competent to do any job. That is what we're asking to be recognized for.

**Mrs Witmer:** Thank you very much.

**The Chair:** Mr Selvarajah, thank you very much. We've run out of time. I appreciate your coming today and participating in these hearings.

**Mr Curling:** Just a point of information: Sri Lankans have one of the highest rates of literacy in the world.

**Mr Selvarajah:** That's right.

**The Chair:** Thank you, Mr Curling.

Just as a reminder, the public hearings will resume at 1:30. You've got a note about another meeting that we

will have at 1:10 in this room.

*The committee recessed from 1205 to 1329.*

**The Chair:** I'd like to call this meeting to order. I call upon the Landmark Group to make a presentation. Is there anyone here representing the Landmark Group? We'll wait for a moment or two to see whether or not we can find members of that group. No? We'll resume the committee hearings then.

#### GOTONG ROYONG TRADING

**The Chair:** Welcome to this committee. You have half an hour for the presentation. You might take as long as you need to make your remarks initially and then allow for questions from the different members.

**Mr Michael Kerr:** Thank you very much. I apologize for the short delay. I didn't realize it was me you were looking for.

**The Chair:** Would you like to give us your name, please. We don't have your name.

**Mr Kerr:** My name is Michael Kerr and on the list of presenters it was indicated that I was speaking on behalf of the Landmark Group. I want to correct that. I am in fact speaking on behalf of Gotong Royong Trading.

**Mrs Witmer:** Excuse me. Do we have a presentation from you?

**Mr Kerr:** No, you don't, and I'd like to apologize for the somewhat incoherent or just disjointed remarks that I'll be making, because I received very short notice of being able to attend today. I just received word on Friday evening, actually, that we were able to present.

Firstly, I'd like to just explain, Gotong Royong is involved in sort of community economic development—grass-roots, cooperatively modelled enterprise in community—and is very much informed by and consistent with the spirit of the proposed legislation. Within the activities that we undertake, which are import and export activities, more often than not with lesser industrialized countries of the world, we have very much that imperative in mind of achieving equity through those we hire as well as those we trade with.

The main reason that we had requested to appear before the committee was to state our real concerns, our reservations, around what we understood to be something of a retreating on the part of the current government away from what had earlier been discussed and proposed within community as to the model that was being moved forward as far as employment equity was concerned.

We feel very strongly that as part of a sustainable, socially just and equitable framework for society, a meaningful and enforceable—and therein lies the element or notion of a mandatory or obligatory framework for employment equity that is crucial. It is part and parcel of that framework in terms of creating a socially just and sustainable society.

That's where we enter the discussion, recognizing not only that we are looking at domestic equity issues but that the domestic dimension is inseparable from the larger, the global, the international equity questions.

The current debate, as I understand it, is around the degree to which the proposals are enforceable. I'd like to touch on just some of the environmental circumstances in community that I think are important to be fully apprised of and fully conscious of in terms of decisions taken by the committee proposals, recommendations made by the committee to the Legislature.

I would strongly urge that the vision that inspires the legislation not be lost, because I think there is a growing perception in the community that the political will which informs that discussion is being lost or it's evaporating and being displaced somewhat by perceived political or electoral self-interest or what may be perceived to be more politically saleable.

One has to look at the broader context in terms of what agenda it is that we're trying to move forward on not only within Canada, within Ontario, but also certainly beyond that. We're talking about profound changes in the economy. The structural adjustments that are reflected in Canada in terms of downsizing, or I guess some are now calling it rightsizing expenditure controls, or provincially the social contract negotiations—they are taking a lead, I think, from a certain global degeneration, where there's this discussion of attempting to create a level playing field, which I think is not fully cognizant of and not fully informed by adjustments that will lead to and allow for a socially just, equitable, sustainable community, society for the longer haul.

What we're falling prey to is a straitjacket of a sort of myopia. That is I guess most clearly reflected, and maybe some of the positions that are being taken by certain individuals and governments, by the so-called backlash that we find in society to some of the proposals in the legislation and some of the earlier proposals which have been diluted in the proposed legislation.

We certainly have all heard of those and the suggestions or the accusations that the merit principle and others are being undermined, or the integrity of such, the suggestion that certain individuals, the white, able-bodied males are somehow going to be disadvantaged in such a system.

All of that is ill informed, it's unaware if not mischievous distortion of fact and an effort to manipulate popular perception, public perception as to the merits and the issues raised as far as maintenance of status quo, failing to recognize and fully acknowledge, fully address the condition, the reality that is so very real that there is in fact profound systemic discrimination currently. That is why the legislation I think necessarily need have more capacity to oblige those workplaces that are affected by the legislation to conform to the requirements.

The question of enforceability, making the legislation mandatory: I think the environment that seems to have been created under the proposals is much too much in the way of voluntary participation. I would think that's probably an effort to ensure greater acceptance, greater participation of the proposals, but I think it's diluting the impact; it falls short of its objective.

1340

In terms of the legislation itself, I'd first like to query the process because of the fact that the notice was so very short in terms of our participation, but as a whole, there seemed to be somewhat short notice and a short time frame, a brief window of opportunity for our community to meaningfully dialogue on the proposals. That's the act itself. But there would appear to have been little if no sort of true consultation process in place in terms of the proposed regulations under the act, which is exceptionally critical, given the fact that so much is left to the regulations as the bill is formulated.

In leaving so much to the regulations, there seems to again have been a drift away from the vision of what it is that we're attempting to achieve in the community. The implications of that or the inevitable result almost is arriving at a lowest common denominator and not something that we hope to put forward or champion as an ideal, whatever the implications of that, or I guess the resistance or reluctance.

The act therefore, I would suggest, requires more in the way of detail and more of an explanation as to the principles underlying it in order that the pre-eminence of the statutory level is maintained or ensured, and whenever there is effort made subsequently to bring changes to the legislation that it would have to have the full sort of scrutiny of the Legislature in order to achieve that, rather than simply through regulation having to go through cabinet. Again, that's where the integrity of the legislation is more ensured, so that the vision again is maintained or can be achieved more consistently over time.

Having within the act the allowance made for mandatory and therefore more effective provisions with clearly stated criteria and implementation measures I think is foundational. Leaving so much to the regulations is in a way belittling or failing to fully acknowledge the barriers, the challenges, that are faced by the designated groups.

If, hopefully, the mandatory conditionality is introduced, there's a need for standard setting, and again within the act. Currently, there appears to be no set standard through which or with reference to which employers, whether it be voluntary currently or otherwise, are able to gauge the degree to which they're effectively conforming with the act.

Through the development of effective standards by the Employment Equity Commission—and I think that needs to be written into its job description within the



act—setting standards with guidelines for goals and timetables for each of the workplace employers will prove much more effective in achieving the objectives.

Without those standards and without the commission developing them with the guidelines for employers, there seems to be no capacity for the commission to do effective monitoring and enforcement, because there's nothing to serve as a reference point. The reference points can change over time, again without those questions, without that debate coming before the Legislature.

With enforcement, I would think that the commission need require appropriate surveys and plans developed through a commission-guided workforce survey, a full employment system review on the part of those employers who are covered, and through the employment system review an identification of the barriers, not only simply to identify but to oblige the employers. This is where the legislation seems to be lacking. There seems to be no obligation, really, for them to address the barriers once they've been identified.

In many areas the bill seems to fall short on that enforcement capacity. Although there's effort made to encourage employers, the expanded public sector/private sector, as appropriate, there's no meaningful mechanism through which the commission can ensure that the stated objectives are being achieved.

The proposal, I think, was for a three-year cycle as a reporting mechanism, and I would suggest that is too long a time frame. I would think a one-year cycle would be more appropriate and that there be filing requirements under that cycle rather than simply the occasional spot audit being made by the commission. Given the very spartan resources being made available to the commission presently and what one perceives to be in the future, the capacity to spot-audit and to otherwise monitor is very, very limited.

In addition to an expanded role for the commission which would include more active research and monitoring enforcement, I think the bill should also provide for more substantial resources to be made available to allow them to be able to do so.

**The Chair:** Mr Kerr, thank you. There are about nine minutes or so left, which would leave three minutes per caucus to ask questions. Would you prefer that or do you want to continue with your presentation?

**Mr Kerr:** I apologize for rambling a bit, because I didn't have a chance to pull things together in a more concise form. Just to finish, I would just like to say that what comes most immediately to mind is some of the frontier areas where we seem to have been retreating, provincially, federally and otherwise. Things such as the court challenges program on a federal level were meant to work in the same way as this legislation towards achieving equity across our society, that broader vision

of what we hope to achieve as a community. We run the risk, the bill being as diluted as it is in terms of the original principles and vision, of going that same path, albeit it on a lesser basis. I would strongly encourage that we hold true to the original vision and try to inform the legislation more fully, in concrete terms, with what the value basis is that we're attempting to buttress through it.

**The Chair:** Mr Curling, three minutes.

**Mr Curling:** I'm sure you've done justice with the short notice you were given to make your presentation. I picked up a couple of concerns you have. I want your reaction to one or two questions. You mention that the legislation lacks details. Do you feel that the regulations fill those gaps?

1350

**Mr Kerr:** To be honest, I've not had a chance to fully review the regulations as they've been drafted. But even if they were to be as comprehensive as what I would feel to be appropriate, the fact that they are in the regulation as opposed to much of that being in the bill itself is, I find, very problematic. I think it doesn't have the same substance, it doesn't have the same integrity.

**Mr Curling:** So you feel that even if the regulation fills some of the gaps, it should be in the legislation.

Let me ask you another question, one of the things that I am concerned about too, that union members and employers form a committee in order to draft the employment equity plan within that committee. Non-union members are not at that table and they are so-called consulted. I don't know what that means. Do you have any concern about that, that those people have been excluded from that opportunity to have more informed input into that plan? Do you have any comments on that?

**Mr Kerr:** It's a very real concern. I think the legislation falls very short in terms of addressing non-unionized workplaces. Although there are some modest provisions to ensure that unionized shops are brought together through an employment equity committee in the workplace, similar provisions need be introduced to ensure, especially given that many of the designated group members find themselves in smaller workplaces, non-unionized environments—that's a crucial element.

**Mr Curling:** My time is up?

**The Chair:** Three minutes only. Mr Tilson.

**Mr Tilson:** Thank you, sir. I appreciate your thoughts. I have one question, and that has to do with the ability of the employer to perform the job it's doing. There's been much criticism, particularly by the business community, especially the small business community, that they simply will not be able to have the financial—that this is yet another layer of bureaucracy, that they're going to have more problems. There's the concern about investment coming in from outside the

province, whether outside this country or from other provinces, that people are looking at this as just another layer of grief in operating, particularly small businesses, although IBM, if you heard any proceedings yesterday, did give qualified support for the legislation.

My question is a question that was asked in the Financial Post editorial yesterday, I think it was, and it had to do with the requirements of the employer to do certain things: to develop a plan, and if it didn't develop a plan it had to show it was moving towards the principles of employment equity.

The question that was asked was, how can an employer guarantee that representation in, for example, the category of skilled crafts and trade or supervisors or the three different levels of sales and service?

You're talking about the government shortening down the timetable from what it is, and yet here is an editorial, and it's not alone in this criticism, where the question is, can small business—and you need small business—realistically do what this legislation is asking?

**Mr Kerr:** We've had similar discussions among my counterparts within the small business community. I feel very strongly that it can. I think there's much more made of the impositions, or the intrusions, of the legislation and whatever it may evolve to than is real. In shortening the time frame, it simply is a monitoring mechanism, and I think the data are there and accessible and becoming ever more so, given the degree to which smaller enterprises are applying newer technologies and newer monitoring systems accountingwise and otherwise.

Where the fear arises is the perceived challenges that it poses to their competitiveness, and inherent in that suggestion is the fact that there's a perception that it's going to be a significant incremental cost to whatever systems they have in place at this moment in time, pre-legislation. I think that's something of a red herring.

**Mr Tilson:** The difficulty is that these businesses are coming forth either outside this committee or inside this committee and are saying: "We don't know anything about this stuff. We're going to have to hire consultants, we're going to have to expand our human resources division, or indeed create a human resources division." They say, "That's just more cost. We're up to here with costs that are being imposed on us by the government," let alone taxes and fees and all of that other stuff that's driving people in this province crazy.

**Mr Kerr:** That's where I think the question of resources being made available to the Employment Equity Commission becomes ever more significant and pertinent, because there should be some threshold below which staff resources of the commission are made available to the smaller employers to be able to achieve those ends rather than their having to incur those costs

of having to create those systems internally.

**Mr Tilson:** I appreciate that thought, although the—

**The Chair:** Mr Tilson, there's no more time.

**Ms Harrington:** Thank you for coming. I really appreciate the vision you put forward today. To me it's a reality of people's lives that you're talking about. You stated that there is profound systemic discrimination, and you're saying that of course it's much broader than Ontario; it's everywhere. You also expressed your sincere desire to ensure the effectiveness of this legislation, and I certainly appreciate that.

I want to mention to you that we are very concerned about small business as well and non-unionized. I don't have time to explain all that to you, but I certainly think we can give you more details about that and maybe look for your feedback on that as well.

I was particularly struck by what you called our unsustainable society. It seemed to me that what you were saying was that if we have a rigid, hierarchical society, it really is, in the end, unsustainable if we have that structure; that what we have to do is have a more equitable society where everyone is included.

So my two questions to you are, first of all, that you mentioned that a white, able-bodied male is not disadvantaged. I think that has to be explained further, because I believe that giving equal opportunity to others and enabling others does not take away from one's own ability to function. That message has to get out there, so can you explain a little further about white, able-bodied males not being disadvantaged by this legislation? Second, because the opposition party does not believe there should be obligatory standards, could you touch on why you firmly believe that this legislation should be obligatory and necessary?

**Mr Kerr:** On the first question, what I understand to be the sort of posturing takes place around the fact that legislation such as this adversely affects the interests of those who have been the beneficiaries of the status quo is simply that. It's failing to recognize, whether it be just not fully comprehending, the fact that as the system exists at this moment in time—"system" meaning the working environment as a whole—simply by virtue of the fact that an individual is of a certain background and characteristic, there are advantages that are to be had, whether it be linguistic facility or whether it be racial characteristics.

But someone who is a white, able-bodied male, understandably, given the historical context of how we've come to be at this moment in time in our community and in our society, has had advantages. To deny that is simply a denial of history. It's so very self-evident. It requires this kind of intervention to ensure that those benefits, those advantages, do not continue to be had.



I guess the most important thing that could be said is that the—actually, could you remind me of the second question?

1400

**Ms Harrington:** First of all, why you feel it has to be obligatory, and the first one was about white males, that it is not giving them any disadvantage.

**Mr Kerr:** As I just had said. But I think the reason for it to be obligatory is that there's every reason to believe—and this is not holding anything against the employers that would be covered under the legislation—that, given that their single most important reference point in decision-making within the business environment is the bottom line—it's the cost-benefit analysis as per their profit-loss statements, and that's something I fully recognize.

But given that, there's a tendency for initiatives such as what would be achieved under employment equity to be pushed down the list of priorities and therefore they would not be fully incorporated into that decision-making matrix as fully as they should be, given where we want to take things.

**The Chair:** We ran out of time, Mr Kerr. Thank you very much for taking the time to come and make this presentation and participating in these hearings.

**Mr Kerr:** Thank you very much. I would hopefully reserve the opportunity to submit to you a written submission.

**The Chair:** Of course.

ONTARIO ADVISORY COUNCIL  
ON WOMEN'S ISSUES

CONSEIL CONSULTATIF DE L'ONTARIO  
SUR LA CONDITION FÉMININE

**The Chair:** The Ontario Advisory Council on Women's Issues. I understand this presentation will be in French, so if you haven't equipped yourself yet, please do so.

Bonjour et bienvenue. Vous êtes Jacqueline Pelletier, alors ?

**M<sup>me</sup> Jacqueline Pelletier :** C'est ça.

**The Chair:** Vous avez une demi-heure pour votre présentation. S'il vous plaît, laissez un petit peu de temps pour des questions et des réponses.

**M<sup>me</sup> Pelletier :** D'accord. Je voudrais faire référence tout d'abord au commentaire éditorial qui a paru dans le *Globe and Mail* de ce matin et qui était intitulé «Giving Equity a Bad Name».

Je crois en effet que c'est précisément ce que fait ce type de commentaire éditorial. J'ai toujours beaucoup de peine à comprendre comment un journal comme celui-ci, qui se dit le porte-parole du progrès dans le domaine de l'entrepreneuriat, n'arrive pas à voir dans ce monde, où tous les gestionnaires progressistes ont compris que les plus grandes valeurs à promouvoir dans

l'entreprise sont la créativité, l'audace, le travail en équipe, aplatir les hiérarchies, les équipes multidisciplinaires, ce même *Globe and Mail* qui se dit —

**The Chair:** Un instant. Je ne sais pas si tout fonctionne. Attendez, s'il vous plaît.

**M<sup>me</sup> Pelletier :** Je vous en prie. Technology at the service of communication. Ça va ? Tout le monde comprend maintenant ?

**The Chair:** Oui.

**M<sup>me</sup> Pelletier :** Bien. M<sup>me</sup> Witmer aussi ?

**Mrs Witmer:** Yes, thank you. Oui.

**M<sup>me</sup> Pelletier :** Alors, je parlais de ce commentaire éditorial paru ce matin dans le *Globe and Mail* et intitulé «Giving Equity a Bad Name». Tout simplement pour résumer, ce que je disais c'est que je suis toujours étonnée de voir que ce journal qui se dit le porte-parole, l'outil journalistique de l'entreprise au Canada, n'arrive pas à voir comment des mesures comme l'équité en emploi makes good business sense.

Tous les gourous de la gestion, y compris Tom Peters et tous les autres qui le suivent, ont compris que c'est en aplatissant les hiérarchies, en formant des équipes multidisciplinaires, en recherchant des gens dont la première qualité n'est pas nécessairement leur formation pointue dans un domaine, comme par exemple le génie, mais bien tout aussi important, sinon plus dans certains cas leur audace, leur créativité, leur capacité d'entrer en dialectique avec des gens avec qui normalement ils n'entrent pas en contact dans leur milieu de travail, les gestionnaires qui travaillent en comité maintenant avec les gens de la chaîne de montage etc, et je vous passe les détails.

Ce même *Globe and Mail*, qui pourtant nous publie constamment un business magazine et des articles disant, «C'est ça qu'il faut rechercher pour la relance économique de l'Ontario», n'arrive pas à voir qu'en introduisant ces éléments de nouveauté que représente une augmentation de la présence des femmes, des minorités visibles, des personnes autochtones et des personnes handicapées, on atteint le même objectif : forcer la diversité pour forcer les gens à entrer justement dans la dialectique, éclater les schèmes établis et créer un milieu où on est prêt à être audacieux et à inventer.

À mon avis donc, ce projet de loi est tout à fait important et essentiel à la relance économique de l'Ontario. L'équité en emploi, ce n'est pas strictement une mesure sociale ; c'est très directement une mesure de nature économique. IBM semble l'avoir compris en tout cas ; c'est ce qu'on a vu dans leur présentation qui a eu lieu, je crois, hier.

Un autre commentaire d'ordre général : nous avons dans ce pays et dans cette province une grande tradition d'intervention. Pour ceux et celles qui viennent vous dire qu'il ne faut pas que le gouvernement intervienne,

pourtant, quand on y pense, depuis la création de ce pays et de cette province, on détourne des rivières pour créer de l'énergie hydraulique, on perce les montagnes avec de la dynamite pour y faire passer des routes et des voies ferrées, on entreprend des campagnes massives pour encourager les gens à ne plus boire de l'alcool lorsqu'ils sont au volant, à fumer moins parce qu'ils risquent de mourir, à porter des ceintures de sécurité.

On a eu beaucoup de résistance mais on a fini par reconnaître les résultats très positifs de ces campagnes pour notre société. On a même un jour, chose que vous ne savez peut-être pas, accordé des terres gratuites à des royalistes français qui fuyaient la Révolution, dont ce Laurent Quetton St George qui est venu faire ses affaires en Ontario à l'invitation du gouvernement ontarien, à qui on a donné des terres gratuites et d'après qui est nommée la rue St-George ici même à Toronto.

Donc, intervenir, ça n'a rien de nouveau ni dans le secteur privé ni dans le secteur gouvernemental. Dieu sait qu'on accorde aux entreprises dans cette province une aide massive sous forme d'exemptions fiscales. Qu'on ne nous dise donc pas que dans le domaine de l'équité en emploi, which makes good business sense, il ne faudrait pas intervenir.

Je veux vous rappeler que lorsqu'on a commencé, en Amérique du Nord, à parler d'action positive — on n'utilisait pas les termes «équité» dans le temps — au tout début, pendant les premières luttes pour les libertés civiles, on n'incluait pas les femmes lorsqu'on parlait d'action positive. On parlait des Noirs aux États-Unis, on parlait des minorités raciales, mais il n'était pas question du tout d'inclure les femmes. Ce n'est que plus tard, au fur et à mesure que les années 60 passaient, au début des années 70, qu'on a commencé à inclure les personnes handicapées. Avant 1965, si tu étais handicapé, eh bien, c'était ton problème personnel, et si tu étais une femme violente ou une femme sans emploi, eh bien, que veux-tu qu'on y fasse comme société ?

1410

Pourtant, il y a eu une grande évolution, et s'il y a eu une évolution, c'est bien parce que des personnes courageuses dans le secteur associatif autant que dans les gouvernements ont bien voulu pousser des mesures qui nous ont obligés à progresser. On est bien content aujourd'hui de se dire progressiste au Canada et en Ontario sur tous ces plans, mais que voulez-vous, nous sommes des êtres humains et nous résistons tous au progrès. Parfois, il nous faut des petites mesures incitatives, et en voici une très intéressante avec ce projet de loi et la réglementation.

Je dois vous dire que le conseil que je représente, que je préside n'est pas en mesure de faire de la recherche maintenant, cet aspect n'est pas dans notre mandat, et que, comme nous ne nous réunissons pas très souvent, ce serait faux de vous dire que nous avons une position claire et précise en tant que conseil.

Toutefois, nous avons discuté du projet de loi, et les commentaires que je vais vous faire représentent non pas une position adoptée en bonne et due forme, mais reflètent plutôt les réflexions que nous avons partagées entre membres et avec notre personnel.

Je veux dire d'abord que dans l'ensemble, les membres du Conseil trouvent le projet de loi 79 acceptable et souhaitent qu'il soit adopté. Il y a bien sûr des commentaires qu'on ferait de part et d'autres, mais dans l'ensemble ce que je dis c'est que ce projet de loi doit être adopté.

Il y a des réticences face à la réglementation, et je vais faire quelques commentaires à ce sujet. Nous avons examiné certains des dossiers qui vous ont été présentés, entre autres par la Women's Coalition for Employment Equity ainsi que par l'alliance sur l'équité en emploi. Je dois dire d'abord mon grand respect pour ces groupes qui ont fait un travail de fond très important pour nourrir votre réflexion et qui connaissent le domaine de l'équité en emploi beaucoup mieux que moi.

Je pense, ayant étudié leurs recommandations, qu'il y a là du matériel très important, des recommandations très importantes qui doivent être étudiées et retenues dans plusieurs des cas pour tout simplement accroître l'efficacité du projet de loi important que vous vous apprêtez à adopter et sa clarté. Parce que moi, je me mets dans la peau de l'employeur, de l'employé, de la personne qui désire devenir une employée, des groupes qui veulent surveiller, au cours des années qui viennent, le succès de la mise en oeuvre de cette loi et de la commission qui aura à juger si, oui ou non, un employeur ou une employeuse fait ce qu'il ou elle doit faire. Il me semble que le fameux slogan «Keep it simple» est tout à fait en vigueur, ou doit l'être plutôt.

Alors, voici quelques-uns des commentaires que je voudrais formuler. Ce sont des commentaires plutôt d'ordre général.

Ce qui m'a frappée, et mes collègues aussi, c'est la nécessité de mieux articuler et même de mieux intégrer le projet de loi 79 ainsi que la réglementation. Je dois avouer qu'en lisant la réglementation, je me suis demandée et j'ai dû retourner souvent au projet de loi parce que les deux, séparément, à mon avis, n'ont pas beaucoup de sens... Je crois que dans les recommandations de l'Alliance et de la Coalition, lorsqu'on vous propose d'intégrer certains aspects de la réglementation à l'intérieur même du texte de la loi, il y a là des recommandations à mettre en oeuvre.

Tout simplement pour que ce soit plus claire, mon impression, ayant eu plusieurs discussions et ayant fait ces lectures, est que dans le fond, une meilleure articulation de la réglementation et du texte de la Loi répondrait à certaines des préoccupations exprimées devant vous par certains groupes.

Je crois qu'il y, a dans le projet de loi et dans la



réglementation, certaines solutions qui ne sautent pas aux yeux, parce que l'articulation n'est pas suffisamment bien faite. Je suis d'accord, par exemple, pour préciser ce qu'on entend par «mesure positive» et pour l'inclure possiblement dans le texte même de la Loi, pour définir ce qu'on entend par «obstacle» et pour l'inclure aussi possiblement dans le texte même de la Loi, tout ça avec un seul but en tête : quels sont les résultats que nous voulons atteindre ? Quels sont les résultats ? C'est la seule préoccupation dans le fond, et comment allons-nous les atteindre de façon efficace, simple et claire pour que tout le monde sache de quoi on parle ?

Ma réaction générale aussi est qu'il y aurait moyen de simplifier les processus qui sont proposés. Je me demande pourquoi on ne pourrait pas travailler de plus près avec Statistique Canada. Est-ce qu'on ne pourrait pas faciliter la tâche des employeurs en impliquant un peu plus Statistique Canada dans l'étude de la représentation géographique, par exemple ? C'est une suggestion.

En tout cas, chose certaine, le texte doit être simplifié pour que toute personne qui a besoin d'avoir recours à cette Loi et à cette réglementation puisse le plus immédiatement possible comprendre de quoi il s'agit. Pensons à la personne qui se dit : «Suis-je victime de discrimination ? Est-ce à cause de ma race qu'on ne m'a pas donné cet emploi ?» Il faut que cette personne puisse rapidement, avec cet outil qu'est le texte, comprendre si, oui ou non, il y a lieu d'aller de l'avant avec une démarche de plainte.

Il me semble que pour que quiconque, que ce soit la Commission, un plaignant ou une plaignante ou les groupes qui vont surveiller le tout, puisse mesurer les progrès, il faut fixer des résultats très précis. Que les pourcentages varient d'un employeur à l'autre ou d'une région à l'autre, cela me paraît évident et acceptable, mais il me semble que deux choses sont essentielles pour qu'on puisse mesurer les résultats : c'est qu'il y ait des échéanciers plus serrés que ceux qui sont proposés et que des pourcentages acceptables à la Commission soient établis.

Je crois que la plupart des membres de mon conseil seraient prêts à accepter que l'employeur et les représentants des employés, en pourparlers, fixent eux-mêmes des pourcentages dans la mesure où ces pourcentages sont réalistes et acceptables à la Commission, mais qu'il y ait des buts à atteindre qui soient précis afin qu'un an plus tard, deux ans, trois ans, quatre ans plus tard, on puisse dire qu'il y a eu ou qu'il n'y pas eu progrès, qu'on puisse dire qu'il y a ou qu'il n'y a pas de résultats.

Un tout petit détail : parmi les politiques et procédures d'emploi dont vous faites la liste à la page 9 de la réglementation, on ne parle pas de description de poste, «job description», et cela m'inquiète. Je me demande si

ça ne devrait pas être ajouté parce que si on parle en particulier de promotion, il faut bien savoir ce que la personne est en train de faire dans son poste pour pouvoir mesurer si elle a bien accompli ses tâches et semble capable d'accéder à d'autres postes. C'est un détail mais qui me paraît important.

Ceci dit, il y a des mesures connexes à l'adoption de la Loi sur l'équité en matière d'emploi et à la réglementation dont on vous a parlé, mais que je répéterai moi aussi.

Vous savez qu'il est essentiel que tous les groupes visés par cette loi aient aussi accès à l'équité en éducation. À quoi bon se faire des idées qu'on va embaucher des personnes, des groupes, si ces personnes n'ont pas un accès sans limites à une éducation qui leur permet d'être compétitifs et d'accéder à des emplois de qualité dans le monde d'aujourd'hui ? Cela veut dire revoir la qualité et la pertinence des programmes qui sont présentement offerts, et cela veut dire l'accès pour tous, y compris un groupe qui m'inquiète beaucoup, les petits et les petites salariés.

J'ai eu l'occasion de lire ce qui sera proposé sous forme de projet de loi bientôt dans le domaine de la réforme de l'aide sociale. Il y a là des idées fort intéressantes, mais je m'inquiète aussi pour les personnes qui ont un emploi mais qui ne peuvent pas se permettre de payer des frais de scolarité. Ces personnes, à qui on veut aussi donner l'accès à de bons emplois et à des promotions, doivent d'abord pouvoir s'éduquer. Cela veut aussi dire si on veut réaliser l'équité en emploi, l'accès aux autres formes d'appui, y compris les services de garde.

Dans un autre ordre d'idée, il me semble que le gouvernement devra investir toute l'énergie requise pour qu'il y ait des campagnes et des programmes d'éducation, de sensibilisation et de formation du public, des employeurs et des représentants des employeurs pour qu'on comprenne ce que ça veut dire, l'équité en emploi.

Cela suppose une commission qui sera bien dotée, une commission qui pourra faire son travail assez rapidement pour que les cas ne traînent pas et pour que tous et toutes puissent voir des résultats le plus rapidement possible. Parce que vous savez comme moi que si on ne voit pas des résultats rapidement, la critique viendra plus rapidement pour vous dire : «Votre projet de loi ne fonctionne pas. On vous l'avait dit.» Il faudra avoir des résultats, donc une commission bien dotée de personnel bien qualifié.

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Je pose la question suivante : est-il bien que le même corps, qu'on appelle une commission, fasse d'une part l'éducation, la formation, la promotion, l'appui aux employeurs, et d'autre part, la poursuite, «complaints and compliance» ? Je ne suis pas sûre que les deux

fonctions devraient être sous le même toit. C'est une question à examiner.

Un commentaire à côté que je fais en tant que Franco-Ontarienne : je sais qu'à l'heure actuelle, la population franco-ontarienne n'est pas incluse dans ce projet de loi comme groupe cible. Je ne suis pas entièrement convaincue qu'elle ne devrait pas l'être. Les études qui ont été menées jusqu'à maintenant pour tenter de déterminer si, oui ou non, les Ontariens et Ontariennes de langue française sont victimes de discrimination en emploi en tant que groupe, à mon avis, ne sont pas encore complètes. J'espère qu'on demeurera ouvert à la possibilité d'inclure éventuellement l'Ontario français.

Un tout dernier commentaire basé sur mon expérience personnelle : j'ai siégé jusqu'à tout récemment au conseil d'administration de la Cité collégiale, le collège français de l'est ontarien et, il y a deux ans, je présidais le comité de nomination lorsque le gouvernement actuel a décidé d'insister plus que jamais pour qu'on trouve des membres pour les conseils d'administration qui sont représentants des groupes visés, entre autres, par cette Loi.

Je dois vous avouer qu'en tant que présidente du comité, j'ai fait beaucoup de recherches, j'ai sollicité beaucoup d'aide et, après quatre ou cinq mois d'effort, j'ai fini par recommander trois hommes blancs pour combler les trois sièges vacants. Les gens se sont bien payé ma tête parce que j'étais une fière porte-parole de l'équité dans tous les sens du mot. Je n'étais pas fière de moi. Je ne résistais pas, je crois, à la volonté du gouvernement de voir les groupes représentés, mais je n'ai pas réussi à trouver ces personnes.

Cette année, avant la fin de mon mandat, j'ai décidé, puisqu'il y avait encore trois sièges vacants, de doubler mes efforts et de doubler ma pression sur mes collègues pour qu'ensemble on trouve une solution, et cette fois-ci on a réussi.

Nous n'étions pas des personnes de mauvaise volonté. En tout cas, je ne le crois pas. Nous n'étions pas contre qui que ce soit, mais il n'y avait pas une habitude, une connaissance immédiate des personnes qui sont actives parmi les personnes handicapées, parmi les minorités visibles et les autres groupes.

Je pense qu'il faudra persister. Il y aura de la résistance, et cette résistance n'est pas nécessairement de mauvaise volonté, quoiqu'elle puisse l'être. Mais il faudra avoir le courage de persister et de continuer à insister, et les résultats, à mon avis, viendront.

Il y a eu résistance lorsqu'en tant que conseil d'administration nous avons dû répondre aux questions pour nous identifier en tant que femmes, francophones, personnes handicapées etc. J'ai personnellement détesté compléter ce questionnaire. J'ai des collègues qui ont refusé de compléter ce questionnaire. Il y a eu une

grande résistance.

Mais encore là, c'est après de longues discussions, parfois autour de la table du souper, qu'on a fini par accepter que oui, même si on déteste répondre à ces questionnaires, parfois dans une société qui se veut progressiste et ouverte et tournée vers l'avenir il y a des choses qu'il faut faire parce que ça aide aux progrès. En fin de compte, il n'y a qu'une personne qui a refusé de compléter ce questionnaire.

Donc, là-dessus, je vous souhaite de persister et bon courage ; on va y arriver. Merci beaucoup.

**The Chair:** Merci à vous, Madame Pelletier. Il nous reste neuf minutes à peu près. On va commencer avec M<sup>me</sup> Witmer.

**Mrs Witmer:** Thank you very much for your presentation. I enjoyed it as much as I enjoyed our conversation last time. I think you've made some very realistic and some very honest points about employment equity and some of the other related areas.

We talked last time, and you mentioned again today, that if we're really going to have a full and fair equity in the hiring process—and I don't want to put words in your mouth—there are other factors and other barriers that we need to consider. You mentioned the need for day care and you mentioned the need for education, the fact that the government needs to do that in conjunction with the employment equity.

What is it in particular that women are looking for as far as education and training are concerned? We've got people throughout the province who need to access that. What can the government specifically do?

**M<sup>me</sup> Pelletier :** Five years on the board of the college have given me a fair amount of ideas. Comment est-ce qu'on dit «la reconnaissance des acquis» en anglais ? Recognition of acquired skills.

The colleges in Ontario are beginning to implement in their course planning the measures that will allow us to recognize the acquired skills not only of women but of everyone in this province, but specifically in the case of women that is critical.

I think the more we advance along that line, the more we will be recognizing the true skills that women have and that have prepared them for the labour market even though they haven't been active in a job. Okay. That's one area.

The other thing is that sadly a lot of the courses that have been and are still being offered in our colleges do not prepare for quality jobs, and there is a challenge there. A number of people, our brothers and sisters in this province, have been out of the labour force for a number of years and do need very, very basic educational support when they prepare to return to the workforce.

However, I do believe that we need to seriously examine the types of programs being offered in the



colleges. The programs being offered, programs such as Jobs Ontario, are they really challenging the people in this province to develop the skills to learn, to be progressive in order to enter the types of new jobs that we are in need of in the province? I'll stick to that for now.

**Ms Carter:** I really appreciated your very lively account of why employment equity is good for business. I think we needed that and I think that was very impressive. These things are subtle, if you like. The more different approaches we have, the more varied people make their contribution, the more we're going to be ready to face the future.

I just wanted to raise the point that you mentioned that francophones are not one of the designated groups. The minister did address that question, and of course francophones are included, I believe, in the Ontario public service specification. Certainly government ministries have to include their quota of francophones, but I think the conclusion was that it wasn't necessary on a wider front, and I also wonder whether what is necessary there is something that the government is acting on, and that's the provision of better educational facilities for the francophone community, especially the colleges. Could you comment on that?

**M<sup>me</sup> Pelletier :** I think the colleges were critical and that has occurred, and bravo. You have seen the immense success of la Cité collégiale, and I think we're going to see the same thing in the north and south.

I believe what will be important is to continue the studies. Remember that in the early 70s disabled people were not considered a group as a group, a group of people who needed this type of measure. Study after study eventually brought our governments and our society to recognize that yes, something must be done to encourage employment.

It may be that we won't arrive at that conclusion with Franco-Ontarians; it may be that we will. Studies will be important and the francophone associations must do those studies, as should the government, in my opinion. My hope is that we will retain the possibility of opening the law if it is adopted without that change.

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**Mr Curling:** I really enjoyed your presentation, and of course there's no doubt that we need employment equity. Considering the fact that we have had ineffective laws that are able to bring about justice and fairness to people, considering also that we have had a bureaucracy that is just confused and just doesn't work—the backlog has created all that—maybe I could ask you, would you then support a law that is weak and vague and not making sure that all these things are tried?

You made some excellent suggestions. Supposing the government does not respond to those kinds of suggestions of tightening up the employment equity bill. I

remember my friend Mr Winner—if he could just come clean and say that this kind of law continues to create a backlog situation that is now existing at the Ontario Human Rights Commission. Could you just comment on that, the efficiency of this?

**M<sup>me</sup> Pelletier :** That is most definitely a fear which I think we all share, that there would be a backlog would, and then that everyone, employers and employees and groups, will say, "Well, you see, it didn't work out."

I would imagine that, having put so much effort in coming up with this law and taking so much critique for it and still going forward with it, the government will be clever enough to adjust it so that it is effective, clear and works. If it doesn't, then I hope we will all be there to make sure that the government is told so.

What else can I say? I will hope that you are listening carefully to the, I think, very sound—I don't hear that many people—mind you, I'm a lay person reading papers, such as the Globe and Mail. I don't hear anyone saying, "We're going to lynch" anybody, "we need quotas." I think we hear goodwilled people say, "We want this to work," and the current incredible transformation we are going through in the economy of this province I think has made us all very realistic as to how much demand we can put on each other. We are all concerned about this province moving forward economically and socially, and so I think many of the recommendations being brought forth by the groups representing "les groupes cibles" are fairly realistic, and, sir, I hope the government is listening.

**The Chair:** Madame Pelletier, merci pour la présentation que vous avez faite aujourd'hui.

**M<sup>me</sup> Pelletier :** Je vous en prie.

**Mrs Caplan:** Mr Chairman, if I could, just on a point the speaker made on quotas. When the member opposite from the government caucus—

**The Chair:** We don't have enough time—

*Interjections.*

**The Chair:** —but you'll have another opportunity. Mrs Caplan, you'll have another opportunity.

Merci beaucoup, Madame Pelletier.

DAVID MacKAY

**The Chair:** We'll call upon David MacKay now, please, for the next presentation. David, you have half an hour. You've seen the proceedings. Leave as much time as you think you would need for questions and answers.

**Mr David MacKay:** Just let me get set up for a moment, okay?

**The Chair:** Sure thing.

**Mrs Caplan:** For the moment he's getting set up, Mr Chair, if you would check the Instant Hansard, I think you'll find that Ms Carter referred to quotas.

Obviously that's what's on the government's mind and that's—

*Interjections.*

**The Chair:** We're trying to be sociable. I think it's just a sociable discussion here we're having until Mr MacKay gets ready to present.

**Mrs Caplan:** Would it be possible to get a page from Instant Hansard to see if in fact Mrs Carter has used the word "quotas"?

**The Chair:** What I'd like to suggest is that at the appropriate time when the Hansard is available people check into that and make appropriate references to it at that time.

*Interjections.*

**Mr MacKay:** Order, order.

**The Chair:** Mrs Caplan, please.

**Mr MacKay:** I should begin by introducing myself.

*Interjections.*

**The Chair:** Continue, Mr MacKay, please.

**Mr MacKay:** I'm only known to you, Rosario, so I should say a few words of introduction of myself for the other members. When I got the list of the people on the committee, I thought, "Well, at least I know some of them," but they don't seem to be here. I was looking forward to Zanana Akande, who's my MPP and I know she understands where I'm coming from on this issue and I've worked with her, and I don't see her. I don't know—

**The Chair:** There's a substitution for her. I don't know what she's doing.

**Mr MacKay:** Okay. Also Gary Malkowski.

In any case, I'm an NDP member. I want to be quite upfront about that. I'm not a happy NDP member lately, but I am an NDP member still and I don't want to hide that. I'm a former trade union officer, and that's where I came to understand and work with employment equity advocates. So I could call myself both an advocate and a practitioner. That's the lingo.

Your senses don't deceive you. I'm white, I'm able-bodied and I'm male, and I'm another white, able-bodied male who's for employment equity. There are a number of us out there. I don't feel threatened at all by this legislation. In fact, I think it's far too weak, and you'll be hearing from me on that as I go along.

The term that's used by some white males is that these principles constitute a form of reverse discrimination, and I think we should deal with that issue directly. I think there is a certain amount of discrimination involved, but I prefer to use the term that they use in Britain, which is "positive discrimination."

I've heard enough about this being a matter of levelling the playing field and it's a question of equal opportunities. It's more than that. There's a certain

discrimination involved. We're finally going to give groups of people who have been disadvantaged in our society a boost, a leg up, make it easier for them to gain access to the employment world and to end their marginalization, and I don't think there's anything wrong with that.

One analogy I'd like to draw at the outset is that I'm also for native land claims. I can remember appearing at a rally at one point where some rather vigorous heckling was being done of Premier Vander Zalm—I'm originally from British Columbia—and one agitated white elderly gentleman came over to me later and said, "Why don't you like yourself?" as if I was some sort of traitor to my race. I'm not worried by native land claims. I think that we ought to share Canada with the native people and that we haven't been doing a very good job of it. As a white male, I think I've had advantages and privileges in society due to my race and sex which I shouldn't have, and I'm prepared to share the world of employment with others who are not white or male. I'd just like to say that from the outset.

That's one reason why I came to Ontario in June 1991, because the NDP had been elected and I thought they were serious about employment equity, and I certainly didn't see that happening in British Columbia. At that point we still had a Social Credit government.

So I became an activist within the Alliance for Employment Equity. I'm not speaking on their behalf today, but I'll be saying a number of things about the experience that the alliance has had in terms of the development of this bill and the regulations, and they're basically negative experiences. They will speak themselves to you later on, but what I'm saying is informed by my experience as an activist within that alliance.

As I've said, I feel that the NDP has a policy, it has a position that's not been lived up to. I'm not referring to convention resolutions which may have been passed at previous conventions; I'm talking about Bill 172. As far as I'm concerned, this is the NDP policy on employment equity, and the problem is that although this is a very good bill and was given first reading May 29, 1990, here we are, over three years later, and we're dealing with a bill which isn't even half as good. It's the same party and it's got the same leader. I have a real problem with that. I think that Bill 172 might have gone ahead right from the beginning, but then I understood that the government didn't want to appear to be dictatorial and wanted to engage in genuine consultations with people.

So I'm going to follow, to start off with here, this backgrounder that was part of Elaine's kit that was given to you a few days ago. First it says, "November 1990: The NDP government, in its first speech from the throne, identifies employment equity as a priority."

Then I'm going to jump right down to November 1991. It says that, "The office of the Employment



Equity Commissioner releases a discussion paper." If this issue is a priority and it takes one year to issue a discussion paper, then I think you can see that we have a problem. That was certainly my first indication that there was a problem. God help us if the thing is not a priority; one year for a discussion paper.

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Anyway, the discussion paper finally came November 5, 1991, long-awaited. I remember us all jumping on it the minute it was released to have a look at it, those of us who were involved in the employment equity business. It was quite an interesting discussion paper. It covered all the options. It was informative. Then we had a number of months of consultations. They did travel all over the province there and that was important. I think, in fact, people were consulted to death. There were 400 written briefs that the commission was given.

Then we get to the point where it took them four more months to come up with a bill. Once again, I don't understand the delay there. I know there was a lot of information to look at, but then when you finally got the bill, which came out June 25, 1992, we had a real big shock, those of us who were upstairs waiting for it to be handed out—even though the Star got it the day before, we didn't get it till the day it was announced in the House. It was this little, small, scanty piece of work which was sloppily written, as far as we were concerned. All this great amount of consultation, all these wonderful briefs that had been submitted—where did all the meat of those briefs—what happened to it? Where did it wind up? It certainly didn't wind up in the bill.

So members of the alliance then thought that we should get back to the Minister of Citizenship and we should say: "Elaine, what's wrong? Your bill—there's nothing in it." We were told, "Oh, don't worry, it'll all be in the regulations."

#### *Interjection.*

**Mr MacKay:** That's another matter. I just want to say that I don't think—I want to quote briefly from my favourite columnist, who's Thomas Walkom. He wrote a column the day after first reading of the bill. He says: "Indeed, the government has been slow. Government insiders say its employment equity bill, designed to make it easier for women and selected minorities to get jobs, was delayed for months by the incompetence of those drafting the legislation."

I have to say that I agree. I don't think the people who are experts in the field, who work for the advocacy groups, most of them unpaid, were taken seriously. So as I say, when we saw this bill, which took so long to produce and had so little in it, we went to lobby. I had the job. I was asked by the alliance to focus on one particular issue. I'm going to do that again today. That is the issue of small business not being properly covered in the bill.

One of the things that came out after the consultation process was a very good and long report from Juanita Westmoreland-Traoré called *Opening Doors*. I just want to quote the same sections of it that I quoted to Elaine Ziemba when we lobbied her last July, after the first reading of the bill and we were so disappointed. Juanita says in her report, "Themes from the Consultations," page 43:

"Obviously, the ability of employers to implement full employment equity is affected by the financial and human resources available. Smaller employers have more limited resources, ability and opportunity to implement employment equity; admittedly, planning may be simpler in smaller businesses. It is important that the maximum number of employers be included in order to ensure that as many workers as possible benefit from the legislation."

On page 48 she says: "Some designated group members and unions opposed a phased-in approach, particularly for smaller employers. They pointed out that smaller employers usually do not have the kind of workforce requiring complex data collection and employment systems reviews. They would not require more time than larger employers to implement employment equity. However, there was some support for giving smaller employers sufficient time, given the current economic constraints on smaller businesses."

On page 57, Juanita says this:

"Employers in northern regions want employment equity legislation to accommodate the unique characteristics of many regions, such as the prevalence of transient population workforces. Designated group members were concerned that exempting smaller businesses from the legislation would mean that many of them, particularly outside of Metropolitan Toronto, would be deprived from the benefits of the legislation. In some areas, smaller employers hire a large percentage of designated group members."

I read these quotes from Juanita's report to Elaine and what happened at the meeting, as I recall, was that she turned her head and talked to the then deputy minister, Stien Lal, for a moment or two and then she came back to me and all she said was this: I'd said, given these comments in the report, "Why have you ignored the wishes of the employment equity-seeking groups in this regard and not made sure that small employers are covered in the bill, and why have you given them more time etc?" because that's where the employment is occurring in this province at this time, whether we like it or not. She had a brief talk with Stien Lal and then she said, "I can't say anything but this, that we put it to the cabinet and we didn't get our way and this is what's in the bill."

Now, what am I to conclude, that this is a weak minister—if so, she has my sympathy and my support—or simply that the rest of the cabinet just doesn't listen

to her but listens to someone else? That brings up the question of the Premier.

At around the same time, there were what are called the Yonge Street riots and they occasioned the Stephen Lewis report. I want to quote briefly from that. The Stephen Lewis report is dated June 9, 1992, and is addressed to "Dear Bob." He says:

"Part 2: Employment Equity:

"This is a quite straightforward section of my report. There was not a single meeting that I can remember where employment equity did not arise. To my surprise, and perhaps naïveté, employment equity is a kind of cause célèbre for visible minority communities everywhere. They see it as the consummate affirmation of opportunity and access. With the possible exception of education, nothing is so important.

"Somewhat anxiously, therefore, I have to tell you that there is great concern about the progress of the government's intended employment equity legislation. It can't be introduced soon enough. And there may be no other explicit legislative initiative which will mean so much to establishing a positive climate of race relations in the minds of every single minority grouping...."

Stephen Lewis made a specific recommendation flowing from this report. He said:

"The employment equity legislation should be introduced for first reading before the end of June"—it was—"and if the session is for some reason prolonged, second reading should proceed. Whatever the timetable for early readings and committee consideration, the bill should be passed by December 31, 1992, to take effect as early as possible in 1993."

Then the Premier responded in the House a few days later to Stephen Lewis's point. He said:

"I share the Minister of Citizenship's pride that she will introduce the Employment Equity Act before the Legislature adjourns for the summer. Mr Lewis has identified employment equity as a fundamental 'affirmation of opportunity and access' for visible minorities in Ontario. The legislation" will "be firmly in place by early 1993, after a full debate in the House and discussion in the province."

What happened? What happened was that second reading was delayed and delayed and delayed and this was a source of immense frustration to those of us who are seriously concerned that this legislation be strong and be implemented as soon as possible. In fact, I think it was almost abandoned around Christmastime. It really looked like it was about to be abandoned. I find it quite shocking, and if I were Elaine Ziemba, I'd be really upset. She didn't even get to announce that second reading was being postponed. Tony Silipo got to announce that on a Saturday afternoon at 5 o'clock at an urban alliance conference.

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This shocked a lot of us, that the minister herself, who had her staff promising up and down that second reading would not be delayed, that it was coming, and all these promises made by Stephen Lewis and by the Premier of this province—"Well, no, for whatever reason, we can't do it."

So some of us from the alliance, because Premier Rae won't meet with us—and we constantly ask him to do that and he says no, he's too busy—cornered him as he was coming into his office in early December. The issue of the day that the press was all concerned about was this Carlton Masters thing, so we didn't really have much time with him. But we got our questions and we said, "Why a second reading delay? We want to know from you," and what he said to us was this, "A public promise has been made that there's got to be some sort of consensus on the regulations before we proceed with the bill." This public promise had never been made. This is just total whole cloth.

Obviously, a private promise had been made to business, but the promise was not made to the employment equity seeking-groups and we were appalled. We don't believe that consensus can necessarily be achieved. It would be nice if it could.

That brings me to the whole question of what I've been observing the last few days here. There's sort of an air of unreality about these proceedings, as far as I'm concerned. I don't want anybody to take this personally because I don't mean to be personally insulting, but I'm an equal opportunity critic, so I'm going to now criticize everybody here.

The Tory party, it seems to me, is trotting out some real stale red herrings and straw men. I'm not sure whether they're wilfully distorting matters or they just have serious misperceptions, but I haven't heard some of this stuff for a long time, this hoary old merit principle thing. It's hard to believe. I don't know whether to take you seriously or not.

I have to say, Alvin, that I've got to respect your life experience as a black man but I think you're being mischievous and playing politics with this issue. You've raised the question of the merit principle as well, and I don't think you should have a misunderstanding about that. You've sort of tried to stir the pot by raising this basically bogus issue of seniority. The unions aren't upset with this bill. The unions are for a stronger bill. I'm from a union background and I think basically that whole seniority thing is a red herring. It was dealt with pretty well in Bill 172 and it's not dealt with too badly in Bill 79 either.

Then I have to say that the minister comes across to me like Pollyanna. She sits here and says, "Well, isn't it wonderful how we've all collaborated and come to this point?" All evidence points to the fact that nobody likes this bill. The employers certainly don't like it.



They don't like being told what they have to do, which traditionally is their affair, hiring and promotion. Something's being taken away from them. They tend to be reactionary. They resist that. The equity seeking groups are really upset. So who's happy with this bill? Elaine Ziemba and perhaps some NDP MPPs; I don't know, but it's all quite unreal to me.

I want to say that I feel employment equity is a matter of justice and democracy for oppressed groups within the workforce who are the majority of it. I disagree with Elaine Ziemba and with the last speaker and with anybody else who makes the point that employment equity makes good business sense. I think that's a moot point, as the lawyers say. Maybe it does, maybe it doesn't. But if it makes so much good business sense, why are the majority of employers opposed to it? Are they ignorant as to their own needs?

I would ask that question and I would answer by saying that I think they just don't want to lose control over the hiring and promotion policy, which is a traditional management right in our society which is hierarchically based and which is a racist and sexist and ablist society. Historically, I would note, and I speak as a socialist now—there are a few socialists in the NDP—it has been in the interest of employers to keep workers divided along racial and sexual lines and to ignore the disabled or use them as cheap labour.

So it doesn't surprise me that people will say: "Why are you attacking the employers? Why are you implicitly attacking the employers?" Yes, they are the ones who are to blame. The workers are certainly not to blame for the fact that the workplace is not equally shared by all the groups in society, that some people have privileges within the workplace. Who else are you going to blame? Obviously it is the employer who is racist and sexist; otherwise we wouldn't have such a thing as systemic discrimination and we wouldn't have a need for a bill.

I've gone through some of the more outrageous things that I think have happened, but I want to conclude that part of it by saying that although the minister likes to say that all the groups have been working together and coming up with lovely draft regulations and a lovely bill, I just want to read something to you as a member of the Alliance for Employment Equity. This is a statement signed by the National Action Committee on the Status of Women, the Chinese Canadian National Council, the Ontario Coalition of Visible Minority Women and the Alliance for Employment Equity. It's dated April 8, 1993. I'd just like to read it into the record. It says:

"We are announcing today that the representatives of the Alliance for Employment Equity, the Coalition of Visible Minority Women, the Chinese-Canadian National Council and the National Action Committee on the Status of Women are resigning from the Ministry of Citizenship's advisory group on employment equity.

"When we agreed to participate in the minister's advisory group last year, we did so because we believed that the government was genuinely interested in designing an employment equity bill that would make a real difference in overcoming the inequality and discrimination faced by women, minorities and people with disabilities.

"Prior to the tabling of the bill at first reading, we engaged in a series of intensive discussions in the group, which included representatives of the designated groups, business and labour. The advisory group reached surprising agreement on a number of issues, including the size of the workplace to be covered, the need for a mandatory bill negotiated with unions in unionized workplaces and that plans should be judged on results rather than attempts.

"Few of these agreements were reflected in the final draft. Furthermore, the minister has been aware from the beginning that all of the designated groups believe strongly that mandatory targets and timetables must be at the centre of an effective employment equity bill.

"Bill 79 was tabled in June 1992. At that time, we expressed our disagreement with the bill, which we thought was an empty shell. We were assured by the minister that many of our concerns would be addressed in the process of developing regulations, some of which could be incorporated into the bill itself.

"Despite our reservations, we agreed to continue with the process. Since June, second reading of the bill has been delayed numerous times. As an advisory group, we have received no explanation for these delays. The group itself has not met since the summer and at least three scheduled meetings have been cancelled, all at the last minute. The latest cancellation was last week.

"We are resigning because we are totally frustrated and fed up with a sham process that has not really taken into account our point of view." This is not me speaking. I didn't even think it was important to go to those meetings.

"Finally, we are resigning because we are no longer willing to give credibility to the minister's claims that the views of designated groups are being incorporated. We call on the government to table Bill 79 for second reading and to open a public debate as soon as the Legislature resumes."

Okay, we're at that stage now and I'd just like to say I'm not trying to necessarily ignore the representatives of the second and third parties, but realpolitik says that if this bill is to be improved, it's going to be improved because the NDP members of the committee want to write improvements into it. Maybe you can get to Premier Rae. Premier Rae says to a convention of the auto workers' union that aliens have not seized his brain, and I quote him.

**Mr Curling:** Are you sure?

**Mr MacKay:** Sometimes I have to wonder, because Bill 172 is pretty damn good, but Bill 79 is a hell of a lot weaker and more confusing, and the regulations we've waited so long for don't clarify matters at all. They just muddy things up. They even introduce new terminology and new definitions.

I would like to say to the NDP members of the committee—

**The Chair:** As a conclusion, Mr MacKay.

**Mr MacKay:** Yes, this is a conclusion and I invite your questions.

I have this sort of great rhetorical question to you as NDP members, members of my party. Right? It's still my party. If you can summon the will to pass those amendments to the labour code under intense oppositional pressure, and then if some months later you can summon the will to reopen and strip public sector collective agreements and put the boot to the labour movement, as you've just done in Bill 48—it takes a hell of a lot of political will and moxie to do that; it's a terrible thing but you were able to do it—why can you not stand firm against the backlash against employment equity coming from the racists and the rednecks? Or do you think, against all polling evidence to the contrary, that these people will now vote for you in the next election? And why do you persist in the fantasy that there has to be consensus before we can proceed? I don't understand that. Has there ever been a time in history where there's been consensus on something this divisive? I don't think so.

My final point is this: Do you not realize that if you are to retain any shred of credibility you have to stand up for the interests of the target groups, who are the majority of the working class in Ontario, against the interests of those reactionary elements, including some workers and some employers who resist change and progress? That's my question to you.

**The Chair:** Mr MacKay, I think you've done an exhaustive job of being an effective equal opportunity critic, and we thank you for your presentation today.

**Mr MacKay:** You're welcome.

**Mr Curling:** On a point of order, Mr Chairman: I notice that you didn't advise the presenter that we'd like time for questioning, and you allowed us to run all this gamut.

**The Chair:** I used my judgement to allow the speaker to continue, because that's what I felt he needed to do and that's what I allowed. Thank you, Mr MacKay.

**Mr MacKay:** I thank you, Rosario. I did run over a little, but I wouldn't mind a question or two, if you could—

**The Chair:** There's no time, Mr MacKay. Sorry.

1500

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair:** Next speaker, John Rae. Welcome, Mr Rae.

**Mr John Rae:** Can I have some water, please? That would help.

**The Chair:** Ms Witmer is helping out with the glass of water.

Mr Rae, we have half an hour. You can take the whole half-hour or you can leave some time for questions and answers. We leave that to you. If you want me to remind you about the time, I can do that. If not—

**Mr John Rae:** Thank you, Mr Chairperson. That's fine. I'll do my best to leave some time for questions. Your schedule has left me with a tough act to follow, but on behalf of the Ontario Public Service Employees Union, OPSEU, I'm pleased to be here, and we appreciate the opportunity to have a chance to be here. I myself am part of OPSEU's central employment equity team. I have been an employment equity practitioner for about 15 years and, as you can obviously tell, am a member of a designated group. You will probably notice me drawing upon my diverse background, all parts of it, as I make this presentation on behalf of our union.

As you know, OPSEU represents some 110,000 individuals across this big province: individuals who are white and who are black, individuals who work part-time and who work full-time, individuals who are disabled and who are able-bodied, individuals who are aboriginal and who are immigrants. We represent workers not only in the public service, the OPS, but in the colleges of applied arts and technology and in a variety of workplaces in the broader public sector. We are proud of the work we do in delivering services to the citizens of Ontario.

We are also not newcomers to the area of employment equity. OPSEU was a major player in the development of Bill 172, and I must say we would prefer to be here making a presentation on that piece of legislation, a bill which we consider to have been somewhat stronger.

Our members, in convention assembled, passed a detailed policy and action plan which looks at OPSEU as a bargaining agent, as an employer of staff itself and as an active part of the community. Our human rights officer, Beverley Johnson, was a member of the minister's advisory committee.

We have a history of support for employment equity, and I want to be very clear in reiterating that support today and urge the committee that it's time for—we want to commend the government for moving the bill through second reading and to this stage. We hope it will be enacted quickly and that the provisions of the bill, as amended—and I'm going to make some recommendations for amendment—will soon come into place



so we can start to see mandatory employment equity in action across Ontario.

Some people look at employment equity as simply a numbers game; some people are inclined to do that. That's unfortunate because, while changing the representation rate in workplaces is clearly the ultimate goal of employment equity, if we focus only on numbers we are unlikely to succeed. Rather, we must look at a several-pronged approach.

Yes, numbers are important; that's the quantitative side. But also, employment systems are equally important; that's the qualitative side. In addition, the climate in the workplace, the quality of working life, the way in which people are treated, the way in which people are introduced into the workplace, that too is important if people, once hired, are going to be encouraged to stay.

As a practitioner, I know that many employers today, those who are interested have had some moderate success in attracting members of designated groups, are finding that as quickly as they come in the front door they're going out the back door. I can suggest some reasons for that. What that ends up doing, of course, is that results in terms of net gains in representation are minimal.

In order to be successful, in order to bring about the kind of changes that we want to see happen, an organization needs to look at numbers, needs to look at systems, needs to look at the climate, the organizational culture.

It is easy, I suppose, to look at a bill, even Bill 79, in isolation, but we must not do that. After all, in terms of legislation, which is important in this field, some already exists. We already have in place the Canadian Charter of Rights and Freedoms and its provisions regarding equal treatment and equal benefit of the law. We have in place section 15(2) of the charter which provides for the amelioration of historic disadvantage. We have the Ontario Human Rights Code which speaks to equal treatment in a number of areas including employment, and we have the Ontario Human Rights Code's provisions with regard to both special programs and the duty to accommodate short of undue hardship.

With that in mind, I view any employment equity legislation, including Bill 79, as simply extending human rights legislation. I view it in that context. With that in mind, I think it is critical to see it as simply being the proactive side, the implementation of the sorts of principles that were contained in, for example, the preamble to the Ontario Human Rights Code. Existing human rights legislation has been primarily reactive. Employment equity legislation is intended to require proactive activity to bring about real, significant and meaningful workplace change.

With that in mind, I suggest that the committee look at a couple of possible amendments. One would be to

extend the provisions of Bill 79 by giving it at least limited primacy, say, over other workplace legislation. Secondly, this bill and whatever regulations are promulgated to implement it must in no way take away from the existing provisions of the Human Rights Code.

As I read sections 11 and 12 in tandem with the regulations which have been issued, I am very worried that enactment of the bill as currently written, along with the regulations as currently issued, could very well take away from the extent of the duty to accommodate. When I think of the situation particularly of people with disabilities—and the duty to accommodate goes far beyond accommodating the needs of people with disabilities—that would be a travesty which must not be allowed to occur. The provisions of the Human Rights Code, especially as it pertains to the duty to accommodate, short of undue hardship, must be maintained and must be written specifically into Bill 79 and any regulations which become a part of this bill. That's a necessity.

#### 1510

Let me move on now to some other provisions. From the standpoint of the labour movement, there are several items in Bill 79 which trouble us somewhat. The first I'm going to refer to is section 41(1)5, which refers to work with employers and the bargaining agent to ensure that seniority not become a barrier. When I read that provision and the fact that seniority is flagged specifically in this bill, the only way I can interpret that section is that there is a view that seniority is a pre-eminent barrier. We in the labour movement reject any such hypothesis and believe that section ought to be deleted altogether from the bill. I must remind you in this connection that it is the employer who hires, it is the employer who establishes training and development programs, it is the employer who promotes, it is the employer at this point in time who develops performance appraisal programs, it is the employer who determines surplus and it is the employer who fires. It is not the bargaining agent who does those sorts of things.

Having said that, you might want to ask me, does that mean the labour movement is disinterested in the idea of partnering with the employer in implementing employment equity? On the contrary. That brings me to section 13, which talks about, "Every employer shall review," and so forth. I have always understood that one of the intentions of Bill 79 was to bring together unions and the employer in a unionized setting to work together to develop and implement an employment equity program within that employer's workplace.

I hope that is in fact the intention of the legislation. If that is the case, and I believe it is, then any reference to "every employer," whether in the bill or in any regulations attached thereto, must be expanded to include language something like—and there are other ways of stating it that would be equally effective—

"Every employer in consultation with union or unions," if the workplace is unionized.

What is intended by this bill must be very clear to all parties, to all sectors in the community. I want to re-emphasize that this bill must be crystal clear. If the intent, as I believe it to be and as I hope it is, is to encourage partnership between trade unions and employers, then this bill must be amended to clearly state that beyond any shadow of a doubt.

The third area of concern involves section 28(2), in regard to powers of the tribunal and orders. I think the trade union movement is becoming increasingly aware of its obligations. After all, those obligations are already enshrined in law and in a number of court decisions, most significantly the Renault decision handed down by the Supreme Court of Canada. Those decisions do in fact indicate that on occasion agreements entered into between the parties, management and the union, can represent some measure of barrier. However, this particular provision, as written, would seem to open the door to giving the tribunal the power and the authority to significantly rewrite a collective agreement. I'd like to say that it would seem to open the door to a significant fishing expedition on the part of a tribunal.

While I don't rule out the possibility that this may be necessary in the rare instance, we believe that rewriting a collective agreement should be a measure of last resort and that it should be done only after other remedies to a particular situation have been exhausted. So we think that needs amending.

The final item of particular concern in a trade union context is section 14(3), involving multiple bargaining agents. This one's a little bit tougher, but it needs some changing. Let me raise some questions. If one assumes that each bargaining agent, when there are multiple bargaining agents present, would have one representative, many unions use a team approach in bargaining. In our union, we have members present but we have a staff person who actually does the bargaining. The coordinator of collective bargaining tends to do the actual bargaining, directed by the members. In other unions, members actually do the bargaining themselves, with support from staff. In either example, more than one person is present. How can that be accommodated in this situation?

A second potential problem involves the respective size of the various bargaining agents that may be present. In some settings, especially in hospital sectors, there can be five, six, seven, eight, maybe even more bargaining agents. Should a portion of an organization that is far smaller than others have equal weight in determining the outcome of a plan? Should we expect that one plan can be determined? Can we expect that the employer will pay for travel costs and so forth in order to let those people come together? You can see there are certain problems. While we do not in any way

rule out the possibility that this provision may work in certain situations, I think it requires a more flexible provision, something which is a bit more, in this case, permissive rather than prescriptive, that certain other models might be possible.

How am I doing on time? Oh, good.

**The Chair:** You have about 10 minutes left.

**Mr John Rae:** Good. We may have a little left for questions after all. A couple of other things I want to comment on; one is that we see this bill currently as basically an umbrella. Like many others, our concern is that so much of the guts of this bill is contained in the regulations. That needs to be amended.

The definition of "designated groups" is contained in the regulations and not in the bill. I find that really strange. From our context, we see no reason why francophones, at least in terms of the Ontario public service, should not be included within the definition and covered directly by this legislation.

**1520**

Similarly, the term "positive measures" is mentioned in the bill but defined neither in the bill nor in the regulations. Positive measures are going to be a critical part of an effective employment equity program. That needs amendment. There are some other definitions which could be included as well.

The level of coverage that's discussed in section 19, both in section 19(2) and in section 19(4), where certain exemptions are provided for and where certain differential treatment is offered, we see as being inappropriate. We believe all workplaces in Ontario should be covered. We see no reason why small business cannot provide the same kind of detail as is expected from larger employers. After all, they're smaller; it shouldn't take them as long. They ought to be able to do it as well. We see no reason why these sorts of exemptions should be offered and strongly recommend they be deleted from the bill.

There are some other provisions and recommendations which you will find in our written brief which was couriered from OPSEU's head office yesterday. I hope it has arrived. If not, it's coming.

**The Chair:** Yes, it has.

**Mr John Rae:** Oh, you have it. Great.

I guess I want to finish by focusing on one other thing. So far, I have focused upon numbers, I've focused upon systems, I've focused upon workplace culture. Those things are important. But employment equity is a lot more than that to me. It's about people's lives. It's about people. It's about the people of Ontario. It's partly about our economic lives.

There are a lot of individuals in this province who have been excluded from the opportunity to participate in the economic life of this province because of various kinds of discrimination which are still rampant in this



province, and that must not be allowed to continue.

If this province is to acquire the sort of economic renewal which we all want and all require, we cannot afford to utilize the talents of only part of the community. In crass economic terms, the more people you put back to work, the more people we take off the welfare rolls. That's an economic gain.

For employers who believe there are some costs involved in doing some of this, I've just mentioned the costs which are accruing to all of us for not doing it. We can't afford to continue not to utilize the talents of all members of the human family in this province.

But it goes far beyond strictly economic terms. We must also think about quality of life. We must also think about the negative effects which unemployment has on people and their lives. The overuse of the medical system, that's partly—not all, but partly—a result of the stress and the unemployment that people are facing these days.

There are human costs. They must not be forgotten. To those who say we can't implement employment equity in these times, some organizations are hiring. The small business sector is expanding, and that's another reason why that sector must be covered. That's the area where growth is happening. That's the area where we expect growth to continue.

But more than that, the whole business about employment equity is—organizations are hiring. Some aren't hiring as many as they were, but people do retire. Some vacancies are filled. Some lateral moves do happen. There are some opportunities for promotion or hiring. That's still going on. And to what extent it is not, this time should be used productively by those organizations to clean up their employment systems so that when better times come—and God knows, we all hope they will—they will be ready to hire. Employment equity is partly about fairness; it's partly about removing privilege which has too long existed in our community.

Coming from a group which I think is perhaps most unemployed and underemployed of all in our community, I have to say that we who are disabled have never known anything but recessionary times. We have expectations that the improved attitudes we keep hearing about will be translated into some tangible effect. That means jobs, jobs, jobs, the opportunity to participate actively in the economic life of this province in our communities.

We aren't alone. There are lots of others who have not had that equal opportunity, have not had the opportunity to realize their dreams either. Anyone who comes from a designated group has expectations that this legislation will help make a difference in our lives in our lifetimes. In order for that to happen, members from all sides, this bill needs quick passage, but it also needs strengthening.

**The Chair:** I'm afraid we don't have enough time for questions. I want to thank you for participating in these hearings.

**Mr John Rae:** Thank you very much.

CANADIAN COUNCIL OF SOUTH ASIAN CHRISTIANS

**The Chair:** The Canadian Council of South Asian Christians.

**Mr Frank Seevaratnam:** Good afternoon, Mr Chairman, members of the committee.

**The Chair:** Hello, Mr Seevaratnam. Are other members joining you today?

**Mr Seevaratnam:** No.

**The Chair:** You are presenting alone. Very well. You have half an hour. If you wish time left for questions and answers, please remember that we have half an hour and you might want to leave 10 or 15 minutes for that.

**Mr Seevaratnam:** We, the members of the Canadian Council of South Asian Christians, wish to congratulate the Minister of Citizenship and of multiculturalism and the government you represent for initiating the much-wanted legislation on employment equity for aboriginal people, people with disabilities, members of racial minorities and women. We endorse the spirit and encourage the will behind your action.

This paper as presented attempts to express in broad form the views of the Canadian Council of South Asian Christians, a charitable organization functioning for the welfare of the communities it serves.

One of its major concerns has been the effectiveness of matters arising out of employment equity as it stands today. Studies on employment reveal that the South Asians, who are about the fastest-growing community in Toronto and Ontario, face more discrimination than other ethnic groups. The Sri Lankans, for example, have a high literacy rate, in the order of 85%. Many who have been employed by organizations like the United Nations Organization, the International Labour Organization, the World Health Organization and private sector companies are today working as security guards and dishwashers due to existing employment barriers.

There is a fear among some mainstream Canadians, which has been reiterated numerous times, that employment equity means hiring less-qualified and less-competent people. It seems to them a foregone conclusion that only white males have the education and skills to perform jobs.

The act versus regulations: The Employment Equity Act in its present form lacks effectiveness in law. The regulations spell out more specifically the course of action necessary to make the act a reality. Therefore, it is imperative that the regulations be part and parcel of the act if the objective is to be achieved.

## 1530

**Workforce survey:** Workforce surveys should be made current so as to establish uniformity in implementation. Another concern raised was the monetary effect. The personnel department of any establishment has the machinery already in place to do a quick update of employee records. A follow-up or update can be done on recruitment, layoff or termination of one's service. This will not be difficult in this computer age. Therefore, the three-year period is unnecessary.

Records could be tied to the government income tax fiscal year. These schedules could be easily prepared and form part of income tax returns by each establishment, big or small. Tax incentives could be used as a reward system which will expeditiously put in place the employment equity plan.

Tax incentives to employers should include expenditures on training, safety and attitude education programs which include cultural understanding and sensitivity for both employers and employees and a certificate of recognition be awarded by the Employment Equity Commission, to be displayed by the employer, for successful implementation of the act.

People's actions cannot be changed or controlled by laws alone. Educating Canadian citizens on the justice and fairness of the legislation through media will prepare the right climate of acceptance and reduce opposition; for example, the necessity for immigration in Canada and the economic benefits of immigrants who come with their education, training and skills.

**Review of employment practices:** The act, to be implemented efficiently, effectively and economically, should speak a common language in that all establishments, big or small, should be covered by the same regulations and act. Recent statistics show that 85% of the businesses are small enterprises. That is growing. Experience dictates that smaller places of work discriminate and abuse legislation more than larger establishments where the union is the watchdog. Exploitation of the racial minority subgroup is, without exaggeration, prevalent.

**Revision of employment equity plan:** The revision of the employment equity plan by the employers should be an ongoing voluntary process. The employer, by his actions, should cultivate and exhibit the correct climate of trust and openness so as to command the respect of his or her employees for the mutual benefit and growth of the establishment. This revision exercise could take the formation of a committee comprising both employer and employee representation. Similar committees are presently in place in most establishments monitoring safety, health and welfare on the shop floor. These committees have worked successfully and have found large acceptance in industry.

**Targets:** The employer, having first studied the pattern of his establishment's composition, should draw

up a work plan, as required by the Employment Equity Act, that will reflect the designated groups and subgroups in the population of its geographical area. This should be as realistic as possible, numerical targets to be calculated on information gathered.

The timetable for the implementation of the numerical targets thus calculated should be enforced with immediate effect, as and when the first vacancies occur. The vacancies should be publicized internally in the establishment, the advertisement to be in languages of the employee composition of the establishment at that time and external advertisements to be through newspapers and government employment agencies. The progress made on numerical goals should be reported annually with the income tax returns.

Fines should be imposed if negligence in implementing government policy is discovered by the Employment Equity Commission. The employer-employee committees, as suggested by us earlier, could be the monitoring vehicle at the work site.

**Hiring:** Hiring committees should be representative of all designated groups being interviewed. Those in positions of hiring should have cross-cultural sensitivity training to meet the needs of the racial minority members being interviewed, these committee members to be selected among employers and employees. In the event of unequal representation in forming the committee, the employer should seek outside existence; for example, from multicultural organizations.

**Employment:** Employment possibilities being explained, the subgroups should be guaranteed training and opportunity for upward mobility so that they can fully participate and contribute to the growth of the establishment.

The process of last come, first go should be circumvented. Otherwise, the whole purpose of the Employment Equity Act will be defeated when seniority is used as the yardstick. Efficiency, education and productivity should be taken into account before the last recruit is let go. The employer should be accountable to the Ministry of Citizenship and multiculturalism for just cause.

**Council composition:** We request that the advisory council adequately reflect by representation the so-far-neglected subgroup of South Asians.

In conclusion, the Canadian Council of South Asian Christians recommends that:

(1) The Employment Equity Commission recognize the existence and meet the requirements of the fastest-growing subgroup of the decade, namely, the South Asians, by including a representative on the advisory council.

(2) The Employment Equity Act incorporate its regulations so as to convince the general public that the legislation is well defined, well meant and has sincerity of purpose to it being implemented.



(3) The Employment Equity Act and regulations entrench uniformity and conformity for both large and small establishments.

(4) Employers be rewarded with tax incentives for the expeditious and fair implementation of the Employment Equity Act and regulation, using, as recommended, employee participation for the process.

(5) The review, revision and progress of the Employment Equity Act be monitored by the Minister of Citizenship and of multiculturalism.

Last but not least, having seen these editorials in this morning's papers by the Globe and Mail and the Toronto Star, we recommend that we educate the media and the public through all avenues available to pave the way for smoother acceptance. Thank you.

**The Vice-Chair (Ms Margaret H. Harrington):** Thank you very much. I believe we have approximately 20 minutes for questions, so that would be about seven minutes per party. I believe we'll start with the Liberal Party. I don't know if Mr Murphy would like to have a question. Mr Curling.

**Mr Curling:** I just want to ask you this. I didn't hear all of your presentation and I apologize for that, but I got the drift of what your intent is all about.

One of the concerns we are seeking some advice on is the way visible minority or racial minority is being stated in the bill. Some are concerned that when we use racial minorities, it is important to have the subgroups placed within it. Groups before us were concerned about that. What is your feeling on that, that there should be subgroups in regard to racial minorities?

**Mr Seevaratnam:** In fact we have made a request that the subgroup be represented on the advisory council, because, for example, a subgroup, the South Asians, is a fair number, because that's a fast-growing community in Toronto today, and they are going to be part of the main fabric of the province.

**Mr Curling:** Yes. Should it be placed in the legislation who are the subgroups and who are these people?

**Mr Seevaratnam:** Yes. Our contention is that we be placed in the legislation, that we be identified.

**Mr Curling:** Let me ask you a question in general too, and a concern that I have. In the legislation and regulation it talks about, in regard to unions, those who will draft the employment equity plan for the company would be unions and it would be the employer and it talks about those who are not members of the union will be consulted. Do you feel that the non-union people, or people who are not members of the unions, should be a part not only in consultation but in the whole preparation of the employment equity plan?

**Mr Seevaratnam:** Yes, and I think I will speak for the whole council. We endorse that, especially in light of the increase in small industries in Ontario. Small industries are growing at the rate of about 85%, and as

we see it, the days of the large corporations are far gone. The backbone of the province and the earning power is in the small industries. We have here lost our resources, and we are going to see more of the small industries which would not have any unions. Most of these small industries require to be represented and that is one main reason why we say that this registration should cover both large and small industries.

1540

**Mr Curling:** One of the concerns I have—and I just want to hear some information on this, to be helpful on this. The Ontario Human Rights Commission has been clogged and backlogged and tries its best to deal with a lot of these problems of racism in our society. This new Employment Equity Commission will be charged to look after certain aspects of it, caused by maybe the inefficiency of the system to deal with discrimination one way or the other. In this bill it's stated in no way about time frames and when these things are to be dealt with. Do you anticipate, as I think already, that there will be also another backlog and there will be also a confusion, when one has a case, where to go in this, whether they should go to Human Rights, the Ombudsman or they should go to pay equity or whether they should go to the Employment Equity Commission to deal with their concerns or the perceived discrimination?

**Mr Seevaratnam:** In this particular instance, with due respect to the Human Rights Commission, which has a backlog, the Employment Equity Commission, which is getting involved with this whole process, should be the vanguard of the whole legislation and the appeal process, because you are setting up a new process. It's been introduced and implemented by your laws and you are going to give the assistance how the process is going to be implemented and you're appointing the aides to expedite this process by implementation to make it a success, and as such, that is the group which has studied, given birth to and will understand it more than the Human Rights Commission, which is overclogged with other appeals.

**Mr Curling:** My colleague would like to ask you a question.

**Mr Murphy:** Thank you very much for your presentation, first of all. I very much appreciated it. One of the points you highlight in your report, right from the introductory section, you talk about many people coming to the country with university degrees and, for example, in the Sri Lankan community, a very high literacy rate, and being employed primarily in manual labour or as security guards, dishwashers. One of the issues, it seems to me, that that goes directly to is the issue of having the skills and the ability to do the job and really just getting an equal opportunity to have access to those jobs and therefore to be reflected.

One of the things that we've been talking about is the idea of merit being fundamental, because, really, the

argument is, and I think you agree, that designated groups have the skills to do the job; it's just a matter of getting the equal opportunity to have access to it.

Our caucus has been saying that we think the preamble, for example, could be amended to add the idea that merit continue to be fundamental to the issue of who should be hired for a position. I also think it's important because it goes to the idea, as you quite rightly point out, about educating people, about selling the concept, and I think that idea added to the preamble could be an important part of selling the concept, of saying it's not an attack on merit, it's about saying that people who have the skills should have a right to the job, an equal opportunity to the job. I'm wondering if you could comment on the idea that merit be added as part of the preamble, as part of the selling of this bill, in essence.

**Mr Seevaratnam:** As I stated earlier, people have the education, people have the experience and people have the knowledge, but they require the opportunity. Reports have said that the immigrants who come in with all these qualifications, as an entrance group, either they are low-profile jobs which really puts them into a depression, a state of depression.

In fact, in a report produced by the Economic Council of Canada, as published in 1992, among its findings it says the proportion of recent immigrants on welfare is extremely small. There is strong indication that education and experience acquired abroad pay much less in terms of earnings than they do if obtained in Canada. Its effect is that it takes all but the youngest immigrants up to 20 years to catch up to the earnings of the mainstream Canadian. University-educated persons account for 27.9% in the case of immigrants compared to 23% for the mainstream Canadian.

The issue, talking from my experience, the council I'm coming from, from industry, sometimes there is the foregone conclusion that qualifications alone won't do; it's the Canadian experience. Even if you have the experience, to cite a very recent example, here is an immigrant who has come into the country with foreign qualifications. He has been a president of an international company abroad. He joins the bottom rung as an engineer, climbs up to be the director of engineering and he's the one and only visible minority in this large American corporation. After 15 years, he's given the golden handshake.

He applies for another managerial job on a board of education. He's selected for the first interview, goes into the final interview and the first question of the final interview that's asked is, "Suppose they refuse to work for you?" Is that a question? That speaks for itself.

**Mr Murphy:** If I can just briefly follow up—

**The Chair:** We can't. We ran two minutes over time, actually.

**Mrs Witmer:** Thank you very much, Mr Seevaratnam, for your presentation. I certainly did appreciate it. I actually come from a community where we have a large South Asian population and I can certainly attest to the fact that it is very highly skilled and very literate. I know some of them have been able to access excellent jobs in industry and at our universities, but certainly there are others who feel that their skills and their abilities just have not been used. I understand what you're saying here.

You mentioned something about the need to incorporate and include small business. When you talk about a small business, how small are you suggesting? What number? I'm not sure if I heard you say—

**Mr Seevaratnam:** You see, when you go by numbers, even one industry of 10 people should follow this legislation.

**Mrs Witmer:** Yes.

**Mr Seevaratnam:** You see, you can't expect them to record everybody from different groups, but they should be conscious of the fact that there is law in the land which dictates this, because it's the small industry which really discriminates more than the large industry. They especially pay below the minimum wage level. These immigrants are victims of circumstances and they're compelled and forced, for survival, to undertake these jobs.

**Mrs Witmer:** So you're looking at—

**Mr Seevaratnam:** The legislation should be broad, large or small, and Ontario is going to see more small industry than large industry. In Kitchener-Waterloo, Cambridge is the backbone of small industry.

**Mrs Witmer:** Yes, I know that, and that's why I was asking you that question. We, for example, had 100 small spinoff industries from our university. So you're suggesting 10, then.

The other thing is that you talked about the designated groups and including subgroupings.

**Mr Seevaratnam:** Yes.

**Mrs Witmer:** How would that be monitored? I'm not quite sure how you're suggesting, if we're going to somehow reflect the face of Ontario—

**Mr Seevaratnam:** When you say "racial minorities," it's a broad brush.

**Mrs Witmer:** That's right.

**Mr Seevaratnam:** But then you have to definitely include in the act subgroups like the Southeast Asians, like the Vietnamese, so you've got, in the whole, racial minorities underlined. This helps the groups or you don't hear their voice, and they are part of the economy anyway and they are going to contribute; they are contributing. In the latest publication of the book *Amidst Tamils* there were 400 industries started by Sri Lankans in the last 10 years and 100 this year alone.



Because they have found barriers, they are going out and doing it.

**Mrs Witmer:** Yes.

**Mr Seevaratnam:** Even the white male Canadians who have dropped school in three years, why are they looking for jobs? Why don't they create jobs? They have to be innovative. We have to get away from the fact that we are going to be given a job by someone.

**Mrs Witmer:** That's right.

**Mr Seevaratnam:** So attitude and approach to employment have to change.

1550

**Mrs Witmer:** You mention here that we should be providing employers with tax incentives. I think it is absolutely necessary that this be done. Can you just expand on that? You've talked here about helping them with their training and their safety, and certainly attitude. I think the key to all of this, if we're going to see equal opportunity in employment for all individuals, certainly we've seen within this committee and elsewhere that we need to change attitudes. How would the tax incentives operate?

**Mr Seevaratnam:** Using tax incentives is a motivating factor for any employer to move fast. All companies hire accountants. All companies have personnel departments which have already done the spadework. They know exactly how many are employed, and when they recruit, they can apply this equity plan, as required by the government. That doesn't mean they're going to get rid of people to hold the proportion. Having these tax incentives will motivate the employer that he's allowed to spend money for training and he can get the best, because he also knows that the immigrants work better. They hang on to their jobs. It's a well-known fact that immigrants are dedicated and have the skill. It's a question of giving them the opportunity, as much as you have English in the workplace. It's another program which has been very successful.

**Mrs Witmer:** Yes, it has been.

**Mr Seevaratnam:** I don't think there's any employer who would be averse to this. There has been a change of attitude and there has been progress. I think the legislation is well-timed. People are prepared for it. Even the younger generation doesn't see colour, race or creed.

**Mrs Witmer:** No, they don't.

**Mr Seevaratnam:** That is your future and that's the way to go.

**Mrs Witmer:** This would go hand in hand, then, with the bill.

**Mr Seevaratnam:** Definitely; with the bill.

**Mrs Witmer:** Thank you very much for an outstanding presentation.

**The Chair:** There are three government speakers

who want to speak to this.

**Ms Carter:** It seems, from what we've been hearing, that there's a problem balancing requirements for seniority rights with employment equity provisions. The previous speaker wanted more strengthening of seniority rights and wanted us to cut out the part of section 41 that deals with this. You, on the other hand, state that the process of last to come, first to go, should be circumvented, otherwise the whole purpose of the Employment Equity Act will be defeated.

It seems to me that as things develop in the future and minority groups become more established in the workforce, they in their turn will require the protection of seniority provisions so that if those were to disappear now, then that might be counterproductive, even from the point of view of employment equity, as time goes on. I was just wondering how you would resolve this dilemma between these two things.

**Mr Seevaratnam:** My recommendation would be still to go by what we have said. The last to come should not be the first to go if he has the qualifications and the efficiency and the productivity, which is what all establishments are in. We are in a very competitive world. For that competition, you must have the best in your workplace. Seniority is not necessarily a right. It should not be ignored or bypassed deliberately, but when it comes to the merit of the case, who is more productive and who gives you a return on the investment? I may have been the best person, may have the best qualification, may have been a senior person; I need not be kept. The most profitable person for the place is what is required, because that is the person who is going to be productive to keep the place open.

**Mr Anthony Perruzza (Downsview):** Even if access to training would make that person just as productive?

**Mr Seevaratnam:** Oh, yes.

**Ms Carter:** But it does seem to be the experience of unions that this is not quite so straightforward as it seems, that people might be recalled for a whole variety of reasons and other people might be let go for a whole variety of reasons and that in practice they need this protection.

**Mr Seevaratnam:** The unions can be educated. Unions are a useful tool. It was the old school concept that seniority always should prevail. But unions understand today that the climate has changed. Unions are very useful in this training program and they themselves are people who are not particularly delinquents in the workplace, which was not so before.

The climate has changed; the climate is right. As long as we explain to them the purpose and objective that the employer wants to keep back somebody who is junior, I'm sure they will appreciate it, because it will keep their jobs as well.

**Ms Carter:** So your view on that is very clear.

**Mr Seevaratnam:** I am definite on that.

**Mr Winninger:** Thank you for your presentation. I should note, though, that we've heard from two union leaders today that they did not believe the seniority principle constituted a barrier to employment equity, despite their very enlightened view towards employment equity.

I appreciated your emphasis on education around employment equity, because I think there's a strong agreement emerging that this is a necessity, both in the workplace and in the population at large. I also found your suggestion for tax credits an interesting one, and I would suggest you submit that to the Fair Tax Commission, which is studying these very issues right now.

Lastly, I need to explore with you a section of your submission, which is number 5 on page 3, where you indicate the recent statistics show that 85% of businesses are small enterprises and growing. I'm in no position to quarrel with that statistic, but I would point out to you that I was concerned earlier as to what proportion of the working population might fall in the category that's 50 employees and less, the businesses that employ 50 and less. There's quite a difference in the statistics for workforce employment and the percentage of businesses that are small enterprises.

I have a table I was given which actually shows that 75% of all employees are employed in businesses that are 50 employees and up. It's true, you may still have a concern around the 25% of employees who are employed in enterprises below 50. I just wanted to point out that the 85% of businesses may not be entirely relevant to what we're concerned with here; that is, covering employment. This bill would embrace, with the strongest requirements, 75% of the working population.

That's not to say the bill doesn't require employment equity with companies less than 50. In fact, there are some sections that are more general in nature, that apply to all companies. Perhaps you can respond to those remarks.

**Mr Seevaratnam:** If I may suggest, you are bringing in new legislation and if you draw the line at 50 or whatever number, you are going to have a problem of bringing in other legislation to cover those less than 50. It is the exploitation of the employees, and where this equity act is not going to be implemented is the place where there will be the most discrimination. These are things which will be siphoned into the human rights act and on. These are the poor people who cannot afford to go there. So when you bring in a law or legislation, let it cover broadly all human beings who are going to be employed.

**Mr Winninger:** I don't wish to quarrel with you, but I'm not convinced; I haven't seen the data that show that businesses with employees under 50 are the ones that discriminate the most. In fact, there was some

material we've been given this week which would indicate that members of visible minorities tend to be more fully employed in small businesses than larger businesses.

**Mr Curling:** That's why they should be covered.

**The Chair:** Please disregard the other comments.

**Mr Winninger:** I do. Why shouldn't you?

**The Chair:** Mr Winninger was asking you one final question.

**Mr Winninger:** I guess I'm asking, is there evidence to show that the smaller companies discriminate more?

**Mr Seevaratnam:** Statistics is only what is recorded. What goes unrecorded in the small industries, in the small businesses? People work there and want their jobs. They won't go and report for you to get the statistics. But the truth of the matter is, the reality is, there is and there exists. If you don't want to believe it and you're going by statistics alone, you're ignoring the reality of life, what exists out there.

**Mr Winninger:** I don't disbelieve that it exists. We've had ample evidence that it does.

**Mr Seevaratnam:** I'm not saying that. I'm just saying there is, and they're required to be covered. You're bringing legislation. Help everybody and don't leave somebody out, because it'll come to a stage that you have to cover these people or these people will go to the Human Rights Commission for sure. They can't afford to and they're afraid to lose their jobs and that is the reality of life.

**The Chair:** Thank you very much. We've run out of time. Thank you for coming today and making this presentation to us.

1600

#### LEARNING DISABILITIES ASSOCIATION OF ONTARIO

**The Chair:** Learning Disabilities Association of Ontario, Eva Nichols. Welcome to these hearings. You have a half an hour. You've seen the process. Please begin.

**Ms Eva Nichols:** Yes. I have done this many times before.

First of all, I'd like to thank you and members of the committee for giving us the opportunity to present on this very important issue. The Learning Disabilities Association of Ontario is the principal collective voice of the 800,000 residents of Ontario who have learning disabilities. In other words, we are speaking on behalf of 10% of Ontario's population.

Learning disabilities are one of the recognized categories of disabilities which are included in clause 9(1)(b) of the Ontario Human Rights Code. In spite of this, people with learning disabilities face significant discrimination and a negative attitude in society. The



Report of the Interministerial Working Group on Learning Disabilities, released by the Ontario government in October 1992 for public comment and subsequent government action, clearly identified the fact that persons with learning disabilities in Ontario face significant systemic discrimination. In fact, to quote from that report:

"The working group found that inequity is the current reality for people with learning disabilities and those who advocate on their behalf. Systemic discrimination against those with learning disabilities is largely the result of misunderstanding and scepticism. In practical terms, this inequity results in lack of access to appropriate assessment services for adults, lack of focused programming, especially in the areas of vocational training, employment and support, lack of access to benefits and a number of other issues which do not relate to employment."

While this report was focused on government and government-funded programs and services, the situation of persons with learning disabilities who look to the private sector for employment is even worse.

The public consultation on this report confirmed these facts, and we currently await government action on the recommendations of the report.

As other disabilities, learning disabilities may manifest themselves in mild, moderate or severe functional deficits, and therefore the need for support and accommodation measures will vary considerably from person to person.

On the other hand, unlike many other disabilities, learning disabilities are invisible and little understood by the public at large. Further, unlike other disabilities, the identification of learning disabilities calls for the administration of a battery of psychological tests, which are not funded through OHIP or any other government-funded service. While some assessment is available through vocational rehabilitation services, the current waiting period for a person to be accepted as a VRS client and to receive the requisite assessment for programming help is at least 12 to 15 months. Further, the recent budget cuts have severely limited VRS's capability of purchasing assessments from community agencies such as Jewish Vocational Service and others.

In fact, people with learning disabilities are the only group of persons with disabilities in Ontario who are individually held responsible for the purchasing of assessments which will then enable them to access the requisite accommodation.

Because there is such limited understanding of learning disabilities, the assumption often tends to be that if the person with the learning disability wanted to succeed then he would try a bit harder. In other words, whereas we now generally accept that society has an obligation to alter the environment in order to enable

the person with the disability to be successful, when it comes to persons with learning disabilities society still expects the individual to conform to the environment.

All of this has a significant impact on the successful implementation of Bill 79, the Employment Equity Act.

The Learning Disabilities Association of Ontario, on behalf of its population, supports the principle of employment equity. The following policy statement was approved by the board of directors of the association and confirmed by the membership as the association's formal policy statement in 1989, prior to the introduction of Bill 79:

"LDAO advocates the introduction of mandatory employment equity legislation in the province of Ontario. Such legislation should contain the following:

"—Clearly defined target groups, with the target groupings such as persons with disabilities clearly defined according to the nature of the disability as defined in the Ontario Human Rights Code.

"—Clearly defined target dates for implementation and reporting mechanisms.

"—Clearly defined incentives for compliance and penalties for non-compliance.

"—Clearly defined targets in terms of outcomes and results.

"—Targets for training and education for those responsible for implementing employment equity programs.

"—Adherence to human rights legislation, especially in the area of accommodating special needs.

"—Targets in terms of entry-, intermediate- and higher-level positions to facilitate career advancement opportunities for the target groups."

Bill 79 clearly includes much of what the Learning Disabilities Association of Ontario was looking for in 1989. However, as we review the proposed act, there are some gaps that we would like to address.

While probably most of the organizations addressing this committee will focus on the components of Bill 79 regarding qualitative measures, the numerical goals, the timetables and enforcement measures, we want to focus our comments on the more basic or fundamental issues, the resolution of which are particularly important to our special population.

The bill as tabled assumes that:

(1) Both the employer and the employee will recognize and understand the nature of the disability that the employee has.

(2) The employer and other employees will have an open and accepting attitude towards all disability groupings.

(3) Unions will support all employment equity initiatives and will not launch grievances on the grounds that the accommodation offered to an employee with a

disability represents undue hardship for the other employees, especially if it interferes with established seniority rights.

(4) Everyone involved will be able to recognize the barriers which interfere with the employee's ability to be successful in the workplace and (5) how those barriers might be eliminated.

While it may be reasonable to assume that much of this will be in place for disabilities which are visible and where the accommodation calls primarily for physical changes to a plant or an office, such as an elevator, ramps, accessible washrooms, TTD telephone systems or Brailled signs, it is much less likely that the attitudinal, training and performance-related difficulties faced by persons with little-understood, sometimes feared, often invisible disabilities will be as easily accommodated.

How can these issues be addressed adequately?

First, regarding the issue of self-identification in section 17(2), all persons with disabilities should have equal access to assessments such that they are all able to take advantage of the opportunity to come forward and access much-needed accommodation in the workplace.

Persons with learning disabilities, especially individuals who are currently in the workforce and who have not been involved in the educational system for the past 10 or more years, may not know that the difficulties they have in the workplace, as well as possibly in family and social situations, may be the result of a learning disability. Many of them feel quite ashamed of their difficulties and deficits, such as the inability to read or do maths or use computers. Over the years when they were in school they probably were often told and ultimately became convinced that they were stupid and that this had to be hidden from other people as much as possible. After all, society's attitude to persons who are viewed as stupid tends to be very negative. Even today, adolescents with learning disabilities often report to us that it is much better to be bad than to be viewed as stupid.

For those whose learning disabilities were identified, hiding the problem is still one of their principal ways of coping. In this respect, persons with learning disabilities, as well as those who have psychiatric and related mental problems, are unlikely to self-identify under the current circumstances prevalent in most workplaces.

Therefore, to promote self-identification, employers must ensure that there are training and sensitization programs in place such that all employees as well as the employer have a good understanding of and a positive attitude towards all disabilities.

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The act is silent on the way that employers will deal with disabilities which are revealed by an employee but for which there is no formal verification offered by a

medical or other professional who is legally entitled to diagnose the specific condition which results in the disability.

If such verification is called for by the employer, then the employer should either accept existing assessment results or, if an up-to-date assessment is needed, then it should be paid for by the employer through the employee assistance program or its equivalent.

It is recommended that the report *Liberating Support Services*, published by the Ontario Advisory Council on Disability Issues in August 1993, be reviewed by this committee and the Employment Equity Commission regarding the issue of requiring verification of having a disability. This is very important when it comes to demonstrating respect for and trust in the consumer with a disability.

Secondly, regarding the definition of "disability," it is recommended that "disability" should be defined in the act, either directly or by cross-referencing the Ontario Human Rights Code. Employment equity is for all persons with disabilities, not just those who have severe disabilities. It is important that all legislation which references persons with disabilities should use the same definitions. Further, it is recommended that the basic entitlements available to persons with disabilities should be based on disability-related need and not on the basis of type or cause of disability, age, gender, ethnicity, presumed competence, labour force status or state in the life cycle of the individual with the disability.

Thirdly, regarding the identification and removal of barriers, as described in section 10, it is recommended that each employer be required to ensure that the employment equity plan for the workplace include training and education relating to specific workplace barriers faced by employees within the target groups. Such training should include information on organizations which may be available to provide advocacy support and information on barriers to full employment for employees within the designated target groups.

Fourthly, regarding the role of the Employment Equity Commission, it is recommended that training, education and dissemination of information about advocacy services and organizations to employers and employees be included within the functions of the commission in subsection 41(1).

Fifthly, regarding the employment equity plan, subsection 11(1), it is recommended that the proposed positive measures for recruitment, retention and promotion of members of the designated groups and the proposed accommodation measures spell out in detail the special measures that the employer will implement in the employer's workplace to benefit employees with the less well understood and recognized disabilities, including learning disabilities.

The goal of employment equity presumably is to



ensure that the residents of Ontario who are able to work do so to the best of their ability, in the most enabling work environment possible. This benefits individuals as well as society at large. The population that we represent, people with learning disabilities, is certainly employable, and the majority of its membership is job-ready, provided that the requisite employment equity measures are in place. In a caring and responsible society, we certainly can provide no less. That is my formal presentation, and I'd be happy to answer any questions.

**The Chair:** We'll begin with Ms Witmer; five minutes.

**Mrs Witmer:** Thank you very much, Eva. I'm sorry I wasn't here for the entire presentation, but I know that as always, you've certainly demonstrated once again your commitment to the learning disabled.

You mention in here and talk about identification. Are you or is the organization concerned about the fact that perhaps the self-identification might result in public release of that information? There's been some concern expressed about confidentiality.

**Ms Nichols:** As far as our consumers are concerned, there certainly is that issue, that if you identify the fact that you have a learning disability, how many other people are going to know it; but it's more, how many other people are going to understand it?

The concern really is that in today's society people still don't understand what having a learning disability means and that it isn't a developmental disability—even though one could say, "Well, what's wrong with having a developmental disability?" But as a result, people are very reluctant to self-identify, especially because, to date, our experience in terms of being advocates for adults in workplace situations has been that the follow-up step is that the employer is looking for an assessment.

We are currently working with three individuals where this has arisen, and in each case the employer is saying, "It is up to the employee to provide verification that indeed they have the kind of learning disability they say they do, because you can't see it." One can say, "Maybe if the employer knows nothing about learning disabilities, that's not so unreasonable." But on the other hand, as I know you know, it costs about \$800 to \$1,000 to get a private assessment from a psychologist to identify learning disabilities which can then be used as part of an employment package. For most individuals, that really is entirely out of the question. In fact, it has been brought to our attention just recently by vocational rehabilitation that it has now had to completely stop purchasing assessment services from outside groups. They say that they do not have people on staff who can assess learning disabilities. So they are looking to us as the charitable organization that works with people with learning disabilities as to what they can do.

We have tried to suggest that perhaps they don't need a full-cycle educational battery of tests, that there are more informal functional-deficit ways of identifying it, but some employers simply won't go for that because they feel that it isn't enough. Especially when they face a possible grievance from another employee, they want to have that piece of paper with the PhD's signature at the bottom which says that it's a learning disability. It really isn't necessary, but that is what is happening. As a result, many people are walking away from jobs which really they can do and for which they require quite minimal accommodation. But because people don't understand how you deal with something that you can't see, the individual ends up walking on the street instead of working. Then of course the complication that arises is that their access to certain benefits is less than for people with other disabilities, which has nothing to do with employment equity. It just aggravates the situation. Many people with learning disabilities are just opting out of the workforce altogether as a result, and that's a big mistake.

**Mrs Witmer:** This is really quite commonplace, is it, that they are opting out, Eva?

**Ms Nichols:** It is becoming quite commonplace. Our consumer advisory group, for example—and these are adults who have had their learning disabilities identified—a number of them at the moment have stopped looking for a job because they are finding that, in this economy, if you come in and say you have a learning disability, that's the end of it. If they don't say so and then they have difficulties in terms of the training program or in terms of functional and performance issues, they are let go, because after all, they look just like the rest of us, able-bodied and apparently intelligent and apparently capable, so how come they suddenly can't learn a certain skill?

One of the individuals we are working with, and over whom, on Friday, we have a grievance arbitration, is an employee of the Metro corporation. Metro wants to help this individual, but it doesn't understand that with the kind of learning disability he has, the training program it has put in place for other people is just not possible for this individual. Also, we have come up with a plan which actually won't cost them any money, but they are reluctant to do something that is different because this person looks like the other employees. They can't look at him and say: "Look, there is a wheelchair, there is a white cane. Therefore, everybody should understand that this person is somebody with a disability." Unfortunately, this is happening over and over again. It's a very difficult situation for many people. Some individuals are well educated, well trained, but have these major performance deficits.

**The Chair:** We're running out of time.

**Ms Harrington:** I was interested in your comments just now. You mentioned how some people are turning away from the workforce because they have been

disillusioned or have given up on the process. Hopefully, this legislation is part of a whole change of mindset in our society to be more inclusive and will be an enabling process to maybe have them gain self-esteem. That's very idealistic—I'm sure there are lots of other things—but certainly employment and opportunities and being accepted would be part of building self-esteem.

1620

I know you are probably concerned about small employers being open to people with disabilities, and my question is, do you feel that for employers, and small employers in particular, there would be added costs to this employment equity to include people with learning disabilities?

**Ms Nichols:** I would think that the most expensive component would be an assessment if they asked for that. Beyond that, it is, generally speaking, extra time and access to assistive devices, such as computers or calculators or tape recorders, that are the most enabling things for people with learning disabilities. In other words, we are not talking about large capital costs, and as much as anything it is attitudinal costs now. I'm sure that some people might say, "That costs a lot of money," but in terms of actually putting out dollars, it really isn't that expensive.

One of the difficulties that consumers have identified to us who in fact function fairly slowly, ably but slowly, is that they are quite prepared to put in extra hours, but then they run into difficulties with the fact that if the workday is seven and a half hours and they need to work for eight and a half hours to carry out the tasks that others do in seven and a half—and they are quite prepared to do that without extra pay—they run into collective agreement problems or perhaps grievances from other people as to how this is handled. I'm quite sure that this is a resolvable issue, because I think that that is really what the whole issue of equity is about, that you allow people to be successful the way they can be successful, and if that means extra time, then so be it.

But I think that the attitudinal changes are the big issues, and I think that just an understanding that if somebody comes forward and says that they have a learning disability and explains what that means for them and what might work for them, not to make the assumption that they are somehow trying to cheat the system and get something they are not entitled to.

Generally speaking, people with learning disabilities don't feel very positively about having a learning disability, and it takes a tremendous amount of courage to come forward and say, "These are the things I do differently and these are the ways I think can be helped and these are the ways I'm prepared to compensate you, the employer, and my fellow employees for the difficulties I might represent."

One of the things that when we work with adults we

always say is, "Don't just go in there and say, 'I'm going to have trouble doing the job the way you've got it laid out,' because inevitably you elicit a negative response, but if you go in there and say, 'Look, I'm going to have difficulties with this component of the job, but if I were allowed to do it a slightly different way, then I can be successful,' then it can work."

**Ms Harrington:** Thank you very much. So what you're saying is that flexibility on the part of society and the employer is the key to it.

**Ms Nichols:** Flexibility and education and training to understand learning disabilities.

**Mr Curling:** Ms Nichols, it's quite a thought-provoking presentation, thought-provoking in the sense that I think much more awareness, as you said, must happen about learning disabilities. What I gathered from your presentation is that there are two roles here: one with the recognition of learning disabilities in the workplace and those with learning disabilities recognized outside the general census survey that would be taken. I presume most of your emphasis is within the workplace, because I presume you're not asking anyhow that learning disability people be one of the designated groups, but maybe sensitized to know there are learning disabilities within the workplace and how we deal with it in the promotional process. Do I understand you properly?

**Ms Nichols:** People with learning disabilities are of course included in that general target group of persons with disabilities, because legislation calls for that. It's just that this particular population, large though it is, often sort of falls off the end of the truck, if you will, because people don't recognize that it is a disability and are much more likely to assume that it is an attitudinal or a social problem.

**Mr Curling:** Yes. Then I understand it properly, that it's almost a subgroup, if you want to call it that, of the disadvantaged group within that area. The difficulty I would have with that, though, with people identifying themselves outside of the broader geographic area and ticking off that in the survey to say, "I have a learning disability," because the workplace would try to then reflect the outside geographic area within the workplace, and if that's not so, I presume that person, upon entering the workplace, would then have to stop to identify himself as a person with a disability. Did you follow me on that one?

The fact is that people may get into the workplace and, as you say, maybe not realize that they have that learning disability, or started off in a group, in an area, and by moving up, realize that the tasks they are given and the difficulty they are having, the fact is that they start to identify they have a learning disability. This itself then becomes—and I hear you saying that it is the employer's responsibility then to find the tools in order to teach and get this person to develop himself to be promoted in the workplace, and the fact is that the



employer should find that fund to assist that person in his development. Am I understanding you?

**Ms Nichols:** I think it comes back to the question that I was asked earlier. Accommodating a person with a learning disability is not an expensive proposition. Where the barrier lies for people with learning disabilities is in understanding what the barrier is, and once the employer and the employee both understand what the particular barrier is, and it may be the way the particular factory floor is laid out or it may be the way instructions are given or it may be the way certain things have to be produced, once there is a good understanding of where the barrier lies, then it can relatively easily be eliminated.

If we had the equivalent of the physical demands analysis that is used very widely and very successfully through the Ministry of Labour, a cognitive demands analysis, so that an employer would say, "In this job, people need to be able to read fluently and really comprehend what they read or they have to be able to do math or they have to have a good memory or they have to have good coordination," then I think an individual could either identify that indeed he should not be going for that particular job because his difficulty in that area is too great, or he could say, "Well, if I were allowed to use a calculator, then I could measure up to the particular requirements to do math." It's just that this kind of knowledge is not there because we don't really look at cognitive areas in quite the same way as we do physical things.

**Mr Curling:** Thank you very much.

**The Chair:** Thank you, Ms Nichols, for your presentation. It was very thoughtful and instructive.

**Ms Nichols:** Thank you.

1630

SOUTH ASIAN CANADIAN  
CHAMBER OF COMMERCE

**The Chair:** The South Asian Canadian Chamber of Commerce.

**Mr George Mathew:** Thank you, honourable Chair and members of the committee. My name is George Mathew. Our presentation is more generalized in nature. We have not spent time studying the act in detail because we are not one of the affected groups directly, but we have an axe to grind as an organization within a designated group community.

I want to start my presentation by going back to a statement made by one of the witnesses here yesterday, "Do you know what it is like to work hard for something and to be told you can't be hired simply because you are a white male?" You heard this outcry from a claustrophobic Michael Buckborough yesterday. "It's wrong because it treats white males like second-class citizens," he further stated.

Honourable members of this committee, Mr Buckborough and his group have clearly stated the need for

employment equity. Does he know how many extra-qualified or superqualified South Asian males and females had been told in the past, directly or indirectly, "You can't be hired simply because you look different, you wear a turban, or you are in some way disabled or you are a native Canadian or you are a woman"? Even before the law has come into force, he or people like him are expressing the fear of being treated like second-class citizens. May we ask him or anybody who opposes this bill on those grounds to think about the humiliation, the frustration the natives of this land felt when they were treated like second-class citizens in their own land and they had to beg the white male in order to fish in their own ponds for generations?

So employment equity is not about reverse discrimination but it is about reminding employers, even to the point of using a stick, whether they are private, quasi-government or government, that they cannot tell simply, "You cannot be hired because you don't look or talk like me," nor can they fill the majority of the positions by word-of-mouth advertising.

That is not how one can select the best. Our organization is not in favour of lowering standards. We are for maintaining standards, but we do not like to be treated like second-class citizens any more. The first generation of South Asians may have accepted subservience, but my son or daughter, who are as good a Canadian as one can be, are not going to take it.

We will use the word of Mr Allan Bishop, except that we strongly feel there will be "backlash" if the spirit of this bill is undermined from the women of this country who earn half of what males make, from the natives of this country who have been kept as wards of the crown and other groups that were treated like slaves. So let us stop the rhetoric; let us stop the posturing. Let us be good capitalists governed by enlightened self-interest and benevolence, as Adam Smith set it out, not by self-serving greed and destructive self-interest.

The South Asian Canadian Chamber of Commerce is a community-based, not-for-profit business organization incorporated under the provincial laws. Our membership consists of businesses that are owned by people of South Asian origin, firms doing business with the South Asian community and countries of South Asia. Organizations like ours came into being because there is no equity, not only in the workplace, but also in the business organizations and the views expressed by these organizations as the total voice of the business community. For example, the views expressed by traditional business organizations on employment equity or NAFTA do not represent the views of the majority of our business community. The mainstream organizations refuse to accept the fact that there is a new generation of business people whom they have kicked out or suffocated but are bouncing back and flourishing.

As a business organization, we are not in favour of too much governmental intervention in the workplace.

We believe the private sector can solve their problems in most situations. However, we are saddened by the fact that the businesses of this province have invoked government action to bring equity in the workplace. As responsible corporate citizens, businesses and their organizations should have brought in a self-governing mechanism to create equity in the workplace and in business practices. Having failed in doing so, our organization fully supports the bill in its present form. We believe it is a balanced approach, given the social and economic realities of the day. We are not in favour of drastic measures such as mandatory quotas that will create animosity and antagonism that will lead to social unrest and economic dislocations.

Opponents of the bill argue that it will provoke businesses to leave Ontario and move to the United States. Our understanding of the US situation is that there are most stringent systems in place to provide equal opportunities for minorities. The present federal equal opportunity commissioner is a South Asian. In the USA, even minority businesses have special privileges such as mandatory percentages of government contracts and loans from financial institutions.

I'd like to add one more thing there, because I forgot it yesterday. Our organization requests this committee to recommend to the government the creation of a business development agency for these target groups similar to the Minority Business Development Agency in the United States, with similar mandatory provisions, as part of employment equity. It should include mechanisms for training and getting contracts by and from businesses and governments. This, in our opinion, will enable these targeted groups to find their own employment, rather than wasting their time and energy going through the self-harassing and gradual suicidal process of employment equity. We will be pressing the government on behalf of our organization on this issue.

A lot of businesses will say, "We'll go down south." What we are saying is, if everybody goes south and produces goods and services for Canada, there won't be enough people employed to buy those goods and services.

In our view, employment equity is not a charity that our community is looking for. Though clear statistics are not available, based on our calculations, we contribute substantially to the gross domestic product of the greater Toronto area. There is nothing wrong in demanding that members of the South Asian community be given an equal opportunity to serve these businesses. If we are good enough to consume, we should be good enough to produce too.

There is no doubt in our minds that there is widespread disparity and discrimination in the hiring and promotion of the members of our community. There is also inequity in business practices, especially in contracts. There are several professionals in our community whose careers have been stagnated at certain levels.

This is especially true in the service sectors, such as the financial institutions and advertising firms. The bill, we would agree, does not go far enough to meet the aspirations of the disadvantaged groups. However, it provides the last opportunity for the businesses to work with these designated groups to redress the present situations, if taken positively.

Businessmen and women in our organizations are mainly the product of the lack of employment equity. They went into business for themselves with a small capital acquired through menial jobs after they were told, "You are overqualified, "not qualified," "lack experience in Canada," all euphemisms for, "Sorry, we do not like your colour, appearance etc." But they took it as a challenge and are now running very successful businesses. They have proved to be first-class entrepreneurs and managers.

The fear of the business community that it will be sacrificing merit when they hire a person with all the qualifications from the South Asian community is unfounded, unwarranted and wrong. On the contrary, they will be glad that they hired some of these excellent talents. We will not accept that our qualified community workforce is second to anybody in productivity, loyalty or work ethic.

We support the spirit of the bill in using a mild dose of coercion in drawing up a plan and setting up targets in employment equity. Hiring suitable employees is not only a business responsibility but is also a social responsibility. Business profits are made by selling services or products to the whole community and not to the "employable class." We believe our community constitutes a substantial share of the aggregate demand, and hiring or promoting members of this community is not a favour but a good economic decision. When private businesses fail to discharge their duties, government is within its right to fulfil its social responsibility. It has happened in the past, and we have no doubt this will not be the last time.

The attitude of the business houses, especially in the retail sector and the advertising sector, is not acceptable to the South Asian community: "We like your business, but we know best how we can deliver it to your taste" is the wrong approach. These industries will do a lot better if they have more employees from the communities they serve. A simple example of this attitude is clearly evident in the catalogues and advertisement magazines.

How many times have you see a cosmetic company or a big department store using South Asian models to sell their products? We hope nobody in this committee will argue that there are not enough "model-like" children, men or women in our community. It is simply good business practice to include them in their catalogues, shows or advertisements. They are refusing to do it due to their bias or fear of backlash. While these businesses expect us to buy their products or read those



magazines, they have difficulty in employing members of our community.

In conclusion, we would like to urge businesses, labour groups, target groups and governments to work together in such a way that there is social harmony in Ontario. Thank you for listening to our views. We hope it will be useful in the final deliberations of the employment equity legislation.

1640

**The Chair:** Thank you, Mr Mathew. Six minutes per caucus.

**Mr Fletcher:** Thank you for your presentation. It's interesting to hear you say that you don't agree with the government interfering in the day-to-day operations of business. I agree with you; I do. As far as the need for employment equity legislation is concerned, I wish we didn't have to have it, but unfortunately, as you pointed out through your excellent presentation, the need has been there for a long time.

As far as employment equity is concerned, you say you don't have any problems with it. Is this employment equity plan in any way, shape or form going to mean you can't hire qualified people for your business? Is it going to interfere in that aspect of your hiring practice?

**Mr Mathew:** The way it is set out now, the number who would qualify, who would come under the employment equity legislation is those with more than 50, I believe, but there are few firms in our community that employ more than 50. I think they would be happy to live with the spirit of the employment equity program.

**Mr Fletcher:** So it shouldn't get in the way of any of your hiring practices?

**Mr Mathew:** No.

**Mr Fletcher:** I'm glad to hear that.

As far as the identification of people who have disabilities or self-identification is concerned, that's not going to be a barrier, that's not going to get in the way of your hiring practices at all?

**Mr Mathew:** No, we don't think so.

**Ms Harrington:** It was a very thoughtful presentation. I particularly liked your quote that the spirit of the bill is using a mild dose of coercion. Also, you make a very bold statement here, that "The fear of the business community that it will be sacrificing merit when it hires a person with all the qualifications from the South Asian community is unfounded, unwarranted and wrong," that I found particularly straightforward.

I'd like you to go a little further. In your opening sentences you referred to one of our presenters yesterday and talked about your position, that you're in favour of hiring the best person and that you are in favour of this bill, and that the two go together. I'm wondering if you could explain that a little more.

**Mr Mathew:** We don't see any reason why both do

not go hand in hand. What we are looking for from our chamber's standpoint—in fact, I was supposed to have another person here. He has a PhD in one of the physical sciences from the University of Toronto, and that man is working as a security guard. He's even being laid off as a security guard. I'm not willing to accept the fact that he will be beaten by another person when he goes for an interview, that he doesn't have sufficient qualifications.

What we are saying is that there is an inequity that has taken place over generations. We cannot, over a period of a few months or a few years, correct it. However, the businesses should understand—they know it very well; the big businesses here know very well that there is an inequity. That has to be corrected. What we believe is that in most cases businesses always try to bring in their own mechanisms, try to change that. How come business houses here have not taken the leadership in providing that?

If that were done, probably there would be no need to cry out loud that this is going to scare all the business from Ontario and is going to create all kinds of backlash, as Allan Bishop says. I don't think it is going to. If there is going to be a backlash, it is going to be from the underprivileged. They should be the ones who are doing the backlash. Where was Mr Buckborough all this time when all our people were treated as second-class citizens? He all of a sudden realizes it now?

**The Chair:** Mr Perruzza, with a short question.

**Mr Perruzza:** You said something right at the beginning, that you didn't see yourself as one of the designated groups covered by the legislation. I was just curious about that.

**Mr Mathew:** Our chamber is not one of the affected groups because we are not looking for employment equity; we are in fact looking for business equity, if we can get that. We are not thinking in terms of—I'm not looking for a job. I'm not going to make any complaint; I stopped that 18 years ago. I was humiliated and I said, "No, I'm not going to work for you any more." So the members of our group are in our own employment and I don't think we are going to be affected directly.

**Mr Curling:** I listened to your presentation very attentively. I just have two questions for you; first, just your comment on, if you're quite familiar with this one, the report of Access to Trades and Professions in Ontario. You spoke about the many qualified people in the South Asian community, and you had the example of an individual who was a security guard with a PhD who is being laid off now. The fact is that many of these people have come—you said he had a PhD from here, I presume, so discrimination may be of colour or something else, why he's not getting a job.

Access to Trades and Professions was applauded by the government of today, and many of the recommendations there would have released a lot of qualified people

in the workplace. Do you feel it is extremely important that the task force report's recommendations be implemented and it would assist very much in employment equity?

**Mr Mathew:** If I understand you correctly, you are asking me whether we support the position that Access to Trades and Professions recommendations be incorporated as a part of this employment equity.

**Mr Curling:** I'm saying that that report recommends that recognition be given to many of the professionals who are qualified abroad, that some recognition be given to those professionals. Unions and professional organizations have put a lot of barriers to that. Do you think that Access to Trades and Professions report, if implemented, would assist in the employment equity bill?

**Mr Mathew:** I would definitely say yes. But the gentleman I referred to does not need to go through that mechanism. He's a product of the University of Toronto.

**Mr Curling:** That's what I said. I said that there are others in your community who could have these qualifications.

My second question: You said in your brief that having failed to do so, the organization fully supports the bill in its present form. My argument about this bill is that it's vague and it's weak. Having an employment equity bill that is vague and weak—do you think that in its present form it will be effective at all in bringing about the changes?

**Mr Mathew:** We had submissions from various interest groups requesting strength in various articles—

**Ms Harrington:** Where are your amendments, Alvin?

**Mr Perruzza:** When are you going to propose suggestions on how you can get better access?

**The Chair:** Don't be distracted by these comments. Continue, please.

**Mr Curling:** Would you mind letting the presenter give his views?

**The Chair:** Mr Mathew, please continue.

**Mr Mathew:** If I go through all these requests to strengthen the bill, definitely, as I said, we would agree that it does not fulfil the aspirations of all the people and it does not go far enough. However, we have certain economic problems in this country; we have certain social problems in this country, just like we don't like to create antagonism. So it may be weak, but it is a good start.

We may have problems. If everybody starts bickering with each other, we're going to have more problems, so what we are suggesting is that business, government, labour groups and target groups should sit down and, as some previous presenters said, there should be some education job done so that people do not go to all these

antagonistic statements. Rather than trying to find problems with the bill or the implementation, if everybody worked together, probably we would have a better Ontario, rather than trying to tear it apart.

Our view is that yes, it has debilities, it has difficulties, it may be weak. However, if we can proceed further from a start, then it will be good.

**Mr Curling:** If the government listened, then it would be a better bill. Yes, thanks.

**Mr Ted Arnott (Wellington):** Thank you very much for your presentation. There are two points in your brief that I'm trying to reconcile, and I'll read them back to you. I know there's a risk in isolating these two points, but I'd like to give them back to you.

"We are not in favour of drastic measures such as mandatory quotas that will create an animosity and antagonism that will lead to social unrest and economic dislocations."

And then later on, "We support the spirit of the bill in using a mild dose of coercion in drawing up a plan and setting targets in implementing equity."

Suppose Mr Curling is right and this bill is not as effective as you would hope and does not achieve the results that you hope in, say, five years' time. How far do you go forward in terms of the quotas and the coercion, as you say, such that it will be successful, without disrupting society?

**Mr Mathew:** Our hope is that businesses will realize that we are here. My personal opinion is, having invited me here, to tell me, "You're not good for this" or "You're not good for that" is not fair. Understand that we are here. We accepted a subservient stance. My son isn't going to take it.

It is good for the businesses to work with all these target groups and find solutions, rather than push it into a situation where the government has to walk with a bigger stick and impose more conditions. I think this is going to stay even if, as Bishop said, the Rae government is going to be penalized for it; even if another government, a Conservative government, comes into power, I don't think it would be able to scrap this legislation, because South Asians are here.

**Mr Perruzza:** They're going to try, though.

**Mrs Witmer:** I doubt it, Tony.

**The Chair:** Mr Arnott, did you have a second question?

**Mr Arnott:** No, I'm fine. I appreciate the answer.

**The Chair:** We have no further questions. I want to thank you, Mr Mathew, for participating in these hearings today.

These hearings will resume tomorrow morning at 10. This committee is adjourned.

The committee adjourned at 1652.



*Continued from overleaf*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

\***Chair / Président:** Marchese, Rosario (Fort York ND)

\***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

Akande, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

\*Curling, Alvin (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

Malkowski, Gary (York East/-Est ND)

Mills, Gordon (Durham East/-Est ND)

\*Murphy, Tim (St George-St David L)

\*Tilson, David (Dufferin-Peel PC)

\*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Caplan, Elinor (Oriole L) for Mr Chiarelli

Carter, Jenny (Peterborough ND) for Mr Malkowski

Fletcher, Derek (Guelph ND) for Mr Duignan

Huget, Bob (Sarnia ND) for Ms Akande

Perruzza, Anthony (Downsview ND) for Mr Mills

Rizzo, Tony (Oakwood ND) for Ms Akande

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

### **Also taking part / Autres participants et participantes:**

Arnott, Ted (Wellington PC)

**Clerk / Greffière:** Freedman, Lisa

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

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## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 19 August 1993

# Journal des débats (Hansard)

Jeudi 19 août 1993

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 19 August 1993

The committee met at 1003 in room 151.  
EMPLOYMENT EQUITY ACT, 1993  
LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

UNITED STEELWORKERS OF AMERICA

**The Chair (Mr Rosario Marchese):** I call the meeting to order. Mr Shell is here and has been here for quite a while. Welcome, Mr Shell. You have half an hour for your presentation. At times during the process, I remind the deputants around the 15-minute mark whether they want to continue with their presentation or leave time for the questions and answers. I leave it to you to decide how much time you want to leave for that.

**Mr Brian Shell:** I appreciate that.

**The Chair:** Please begin any time.

**Mr Shell:** Good morning, ladies and gentlemen. Thank you, Mr Chairman. My name is not Harry Hynd. Harry Hynd is the union's district director, and unfortunately he is not able to be here today. He has asked me to convey his regrets to you but to assure you that the fact that he isn't here has absolutely nothing to do with the significance that the United Steelworkers of America places on Bill 79, both in supporting it and in seeking that it be revised.

I am the union's Canadian counsel and I had the interesting experience of serving as a member of the Employment Equity Commissioner's regulations development advisory group at the invitation of Elaine Ziemba. So I have an intimate, indeed a professional, involvement in the regulation development process, but I assure you that I take no responsibility for the product that was the outcome of that process.

For the Steelworkers it is an honour to appear before this committee again and before the government again to tell you about what we think of Bill 79. To start with, we believe that it is dramatic legislation, an important first step towards ensuring that Ontario workplaces provide equal access to members of designated groups in Ontario that have been the victim of systemic discrimination.

I'd like to stop there for a moment and say that what underlies Bill 79 is an acceptance that there is systemic discrimination rampant in Ontario's workforces and in

decision-making that impacts on citizens and that this systemic discrimination is not countered by laws, in particular by the Human Rights Code and the administration of the Human Rights Code, notwithstanding that there is a section and provisions in the Human Rights Code as well as outstanding jurisprudence from our highest courts that deal with systemic discrimination.

The fact is that a case by case, piece by piece, individual by individual approach to eliminate systemic discrimination in the workplace does not, will not and has proven that it has not worked.

This fact, systemic discrimination, is what the media has failed to appreciate. They fail to understand that the issue about employment equity is to counter systemic discrimination. If media and business groups come to you and say, "We support employment equity, we support it, we support it," the question you must pose is, "What have you been doing about systemic discrimination in your hiring practices, witness?" When the witness waffles and fails to comprehend the issue of systemic discrimination in the workplace, then we can focus upon the question of mandatory versus directory versus voluntary employment equity.

If somebody says to you, "We don't have systemic discrimination in our workforce. After all, nobody has charged our company with a breach of the Human Rights Code. Nobody has said that we engage in adverse-effect discrimination. So let us voluntarily set goals and timetables"—when somebody says that, you now understand exactly where they're coming from and you understand what they're saying and why they want to maintain a voluntaristic system.

As you'll see from these remarks, it is unfortunately our view that Bill 79 maintains a voluntaristic system of employment equity. While it is much more far-reaching than the federal regime and it has much more serious consequences for reporting and information gathering and it will be a wonderful playground for statisticians and future researchers examining the social fabric of Ontario in this decade, we have very serious reservations about whether it will actually cause results and that, after all, is what Bill 79, by its own stated principles, is supposed to achieve. It is supposed to achieve change. It is supposed to change the way businesses make decisions.

Many of you are very familiar with the Steelworkers. I should tell you that the Steelworkers represent approximately 75,000 employees in Ontario in virtually every sector of the province's economy. We deal with many, many hundreds of employers, not just a few large ones.

We deal with mainly small ones. We administer and negotiate 600-plus collective agreements in Ontario that renew every two or three years so at any moment on any day of the week there are dozens of Steelworkers' bargaining committees dealing with employers and negotiating collective agreements. In that sense, we are without a doubt the most diverse and most significant general workers' union in Ontario.

1010

You may be surprised, however, to learn that the vast majority of our bargaining is with small employers covering bargaining units with fewer than 100, and I choose the number 100 because that fact means that the vast majority of workplaces that we deal with will have so-called modified requirements because they are workplaces between 50 and 100, and the overwhelming number of new employers who are generating the new jobs have fewer than 50, and they are exempt, as you know, from any requirement under this legislation. That is a major, significant, serious, overwhelming deficiency. In the submissions of Director Hynd, he calls it shortsighted. Depending on what we think will be the political climate in Ontario, this may have been our opportunity to implement the vision and we may be losing that opportunity.

We say without any hesitation that the benefits of this legislation should extend across the province. It can't be denied that pervasive, systemic discrimination has to be dealt with wherever it appears. It is not okay to seek to eliminate systemic discrimination in a big company and countenance it in a company that has 47 employees. That is simply not okay, and there is no policy justification for it. There must only be a political justification for it, and we cannot accept all political justifications.

There are fundamental political justifications with fundamental law-breaking: systemic discrimination in Ontario today is unlawful. Let's not forget that. So by exempting employers who have fewer than 50 employees, we are in effect saying: "We will countenance your law-breaking. We will not require that you deal with the systemic discrimination that you practise."

There is widespread confusion in the workplace and among our members. Our members are being told that this is an anti-white male bill; that's what they're being told. They are not being told by the media or by business organizations that this is a bill that seeks to eliminate systemic discriminatory practices of employers. There is an obligation, I submit respectfully, for those who defend and promote this legislation to get the message out. You cannot simply leave that job to the groups in the community.

That message, that we want to eliminate systemic discrimination, has to get out, or the confusion and the manipulation of the public opinion will continue and we will get on the caboose. We will not be anywhere near the engine of the train on the question of the elimination

of systemic discrimination.

The Steelworkers has an enormous commitment to changing the face of Ontario's workforce. Our membership reflects Ontario's diversity and, realistically, our membership reflects systemic discrimination in hiring. The fact that our membership is very white and very male doesn't reflect anything about the union. It reflects the fact that employers where we organize workers have hired employees who are overwhelmingly white and overwhelmingly male. That's what it reflects. So we are a microcosm of Ontario, we are a walking example of the consequences of systemic discrimination.

We know, as our brother from the CAW said to you yesterday, that those who engage in systemic discriminatory practices do so for clear, unstated purposes and they will not stop, they will not hesitate to continue their practices, notwithstanding their nice words. They will not stop unless there is clear, effective, precise, enforceable legislation prohibiting unlawful conduct.

The Steelworkers believes that the workplace is a place where social change begins—it is the place where change begins—that the workplace mirrors the kind of society we have built, and that too many decisions about the workplace are taken by too few, without regard to the values in our society, such as that which underpins this legislation, namely, equal opportunity in employment.

We congratulate the government's resolve to turn the page on the past, to direct that change shall take place so that the disentitled and the disenfranchised, those systematically excluded from the fruits of our collective success, will find legislative support for their legitimate aspirations.

We applaud the recognition in the bill of the trade union as the key player in making employment equity a reality in the workplace, at least where employees are represented by a union. We look forward to negotiating employment equity plans with employers, even though the legislation doesn't call it that. Why doesn't the legislation call it what it is? They call it joint responsibility for the development of an employment equity plan. What does that mean?

We will welcome the opportunity to identify barriers to employment equity.

Some say this legislation is unequal. I say to you that as Madam Justice Rosalie Abella wrote in her important report on employment equity, this approach to equity is a new concept that we have finally begun to appreciate. Bill 79 accepts the principle that equality is not about treating people the same. That is not what equality is about. Equality is about treating people in accordance with their historical differences. That is what modern equality in a modern, welfare, capitalist state is about.

We're hopeful that Bill 79 will begin the process—I emphasize "begin", and it may be a very slow begin-



ning; with careful review of the bill and the regulations as you've done, you see it will be a very slow beginning—of eradicating systemic discrimination. At the same time, we're concerned about the bill's deficiencies.

We are concerned that the bill will make it impossible for the government to really direct the change and to ascertain the results and, I say candidly, to take credit. I say candidly that if there's going to be fundamental change that changes Ontario and it's good change, by golly, the government that has ushered that in should take credit for it. What is the point of taking credit for something where there are no ascertainable results, where people are going to say in two years: "Mush. No results. Lots of numbers. Mush. No change. Mush. It's all mush"?

By the stroke of a pen, three quarters of the importance of this legislation can be removed without returning to the elected members of the Legislature. Why? Why is so much of what's important in this legislation relegated to regulations? It's unheard of. It's shocking. It's striking. It's wrong. It should be re-evaluated. You should reconsider it and in your considerations of the amendments that are needed, you should turn to the regulations and bring the regulations into the bill. Not by regulation: We should mesh the regulations and the bill in a very major and significant and important way.

Now, we're not so naïve to think this bill doesn't present enormous challenges to the trade union.

1020

**The Chair:** Fourteen minutes left, Mr Shell.

**Mr Shell:** I'll be four more minutes.

It will present enormous challenges to us, extraordinary challenges. We don't have a membership leaping up and down saying, "Terrific, this is just what we wanted." We have a membership that is confused. We have a membership that doesn't understand this very well. But we tell them, and we never forget to tell them, that they have brothers and sisters, that they have wives and husbands. Some of their family are able-bodied and some are not so able-bodied.

We don't forget that the vast majority of our members or their recent ancestors came to this land from far away, seeking a future with dignity and security as Canadians and as employees. They wanted to be free from bigotry and racism. They expected it and they're entitled to it. We don't forget that our members include aboriginal people, whose treatment over the course of generations by the immigrant majority must be redressed.

To employers who are sincere in wanting to enhance opportunities in the workplace for the designated groups, the Steelworkers says that it will serve as your ally in the workplace. But to employers who rub their hands in glee at the opportunity to mask their plan to strip their employees of rights gained through struggle

and collective bargaining, behind their gentle words of support for the so-called principles of employment equity, we say that the Steelworkers will rise up in opposition to their deceit. We will not countenance any attempt to divide our membership along racial, gender, ethnic or any other line of demarcation.

I have reviewed, and Mr Hynd sets out, some of the concerns and our fundamental support for the bill. We submit that you should look carefully at what we've said, and importantly, you should examine carefully the detailed proposals that will be presented by the Ontario Federation of Labour. We want to work with the entire committee, or at least with those portions of the committee who have a concern for our concerns. We believe it is important that this bill be amended so that it will be effective.

There's some commentary here about the thorny issue of seniority. Somebody may want to ask me a question about that and I'd be happy to try to respond. It is a concern, but it is by far not the most important concern. The most important problem with this bill is the fact that there are no standards that will be determined by the Employment Equity Commissioner's office against which there can be a measurement of the results of an employer's employment equity plan. Because there will be no standards, the voluntary setting of so-called goals and timetables really means that an employer's plan is going to be compared to the employer's own conduct rather than to objective Employment Equity Commissioner standards that have been developed.

Some say it's impossible to develop those standards. Hogwash. It's difficult. It's time-consuming. It requires expertise. We would probably have to have real, live people with skills and ability in labour market analysis employed in the office of the Employment Equity Commissioner developing those standards. Of course, in the end, where an employer might fail to achieve the standards, the employer can explain to the Employment Equity Tribunal the reasonable efforts under the bill that the employer took. It's only where the efforts to achieve the standards would be not reasonable that the Employment Equity Tribunal would interfere.

There is nothing, I submit, in this bill that is even remotely similar to quotas; nothing. So to those editorialists and those business organizations that claim that Bill 79 imposes quotas, they should look at *Brown v the Board of Education* so they understand what a quota system is. Quotas are a dramatic effort to inflame.

Those are my submissions. I'd be very happy to entertain any questions and to assist the committee in any way possible.

**The Chair:** In the absence of the official members of the opposition, we'll accord five minutes per caucus. Ms Witmer to begin with and then Mr Tilson.

**Mrs Elizabeth Witmer (Waterloo North):** As

individuals who are sitting in this room in an attempt to come up with legislation that is going to create an environment in which there is equality of opportunity for all people in this province, I'm rather disappointed in your remarks. I found them somewhat divisive. I think you would have to agree with me that there are many, many employers in this province who have long ago embarked and made an attempt to ensure that there will be fairness and equity in the hiring process.

I also hear you saying that you're going to stand up. I don't hear you saying that you're going to work cooperatively with the employers, that you're going to work cooperatively with people in the province. I have to tell you that that frightens me, because this is a very sensitive issue. It's an issue that we need to work together on in order that, at the end of the day, everybody in this province will feel that the hiring process and promotions have been fair and equitable. Certainly, I would hope that you are prepared to cooperate. As I say, there are many employers who have made outstanding steps and are working actively and cooperatively with their employees in an attempt to have fairness in the workplace.

**Mr Shell:** I agree, Mrs Witmer, that there are many, many employers, and we have the pleasure of negotiating many, many collective agreements with many, many employers who sincerely want their workplace to be representative. To those employers, as I've said, we are and will continue to be their allies. But regretfully, there are many employers who systematically engage in systemic discrimination in the workplace.

**Mrs Witmer:** But you know, I think it's important to recognize that there are many individuals in this province, individuals probably within your union, people who I know, who discriminate as well. I think that's the larger problem we have to face.

**Mr Shell:** That is a larger problem, that's true. That's precisely why in recognizing systemic discrimination—not the kind of discrimination to which you made reference, namely, direct discrimination. Systemic discrimination requires a systemic approach. That's why Bill 79 responds systemically to a systemic circumstance.

**Mrs Witmer:** I guess my question to you would be, what are you doing within the Steelworkers association? Do you have an employment equity plan?

**Mr Shell:** Yes. The Steelworkers not only has a plan, the Steelworkers has a process by which we engage actively in the negotiation of employment equity plans.

Many of you may have heard, for example, of the path-breaking, precedent-setting collective agreement with Placer Dome in Dona Lake northwest of Thunder Bay in Ontario, where for the first time in Ontario's history, a private sector union obtained affirmative

action for aboriginal people, notwithstanding their lower seniority. It's important to realize that a white workforce agreed and accepted that there be employment equity for aboriginal people notwithstanding their lower seniority, that they would be entitled to engage in traditional economic activity and not lose their seniority status, that they would obtain preference for promotion and other benefits of the collective agreement, notwithstanding their lower seniority.

Unfortunately, for reasons that are completely unclear and that have to do with gold prices, Placer Dome has shut down its operation in Dona Lake and we haven't had the pleasure of renegotiating the agreement. But the fact is that we have policies and we seek to implement those policies, and we run into resistance because: "Hiring," say employers, "is the unilateral job of the employer. Don't talk with the union about it." In principle, for 50 years in Ontario, unions have not been able to encroach on that unilateralism.

1030

**Mr David Tilson (Dufferin-Peel):** I listened to some of your comments and some of them I agree with; a lot I disagree with, with due respect. One of the concerns I have with what this government is doing—and some of the things that you have said bring to mind, of course, the George Orwellian statement, if I could paraphrase him, that says all people are created equal but some people are more equal than others.

When you started talking you spent some time on systemic discrimination. There is discrimination against our seniors, because people are reluctant to hire seniors because of fears of pension, in particular senior women who may not have been in the workforce for a considerable period of time. There are already suggestions of more religious discrimination, particularly with the government's Sunday shopping legislation, which I know your union is concerned with—maybe not your union but the union movement is concerned with and which completely contradicts what this government is doing. But there is discrimination with respect to the issue of people being forced to work on Sundays.

There's the issue of language. There's certainly the visible minority. I believe we will all agree in certain areas of English Ontario that there's discrimination against francophones. There's discrimination against—

**Mr Shell:** You know, Mr Tilson, if your point is—

**Mr Tilson:** Just let me finish. Just let me make my point.

**The Chair:** I should point out, Mr Tilson, I am leaving some flexibility of time, by the way, so don't feel that you're time-restrained.

**Mr Shell:** I was trying to hear the question.

**The Chair:** I will allow him to finish that, and we'll give you time to respond. Go ahead.

**Mr Tilson:** My point that I'm trying to make is that



there are all kinds of discrimination that goes throughout our society and which hopefully is being dealt with by the Ontario Human Rights Commission—maybe it's not, because we're talking about the lengthy delays. Yet this bill does remind us of George Orwell.

**Mr David Winninger (London South):** You.

**Mr Tilson:** Well, you're darned right I'm going to be reminded of you, because you in particular, how you vote on Sunday shopping is an absolute disgrace in this province.

**Mr Shell:** Maybe I've missed the question again.

**Mr Tilson:** But let me get back, Mr Chairman; the issue is that there are all kinds of people who are being left out as a result of this bill.

**Mr Shell:** I would like to comment on that.

**Mr Tilson:** The difficulty is: Are some people created less equal than others; are more people more equal than others?

**Mr Shell:** There are a lot of people who have the kind of simple view of discrimination that you have just espoused. Some people would say that when my son last night selected tiger tail ice cream over vanilla ice cream he engaged in an act of discrimination because he made a choice between two options. "Discrimination" is a word that is much abused.

Systemic discrimination pertains to prohibited grounds of discrimination. It is the turf of the Human Rights Commission, that's correct. But systemic adverse-effect discrimination is hidden; it's hard to uncover. People do not say, when they refuse a job to a woman, "I'm sorry, we're not hiring women this month." They used to. It used to be okay to say, "No women, no Jews, no Blacks." We used to have posters in this province that made it clear in the hiring halls. That's no longer okay. You can be caught for that.

The fact is that systemic discrimination requires a more sophisticated, a more deliberate, a more careful and more enforceable, a wiser statutory scheme to effect the change that, behind your question, I see you support. The change is that in fact there should be designated groups in the workplace. Older women should be present in the workplace. Persons with disabilities should be present in the workplace. Racial minorities should be present etc.

**Mr Tilson:** Do you agree that there's a whole group of people that are being left out of this piece of legislation?

**Mr Shell:** The designated groups are by far the most significant collection of people who were left out.

**Mr Tilson:** What facts do you have to rely on that?

**The Chair:** Mr Tilson, I've given plenty of time for that flexibility. We need to move on.

**Ms Jenny Carter (Peterborough):** I am indeed going to raise the question of seniority. I see there are

paragraphs about that in your written presentation that you didn't in fact go through.

Now, we did have presenters yesterday before this committee who put very opposite views on this. One presenter said, "You don't need Einstein to run a machine." In other words, if an employee is good enough and qualified to do a particular job, then it doesn't matter that there are other people with higher educational qualifications and so on. So seniority should be paramount.

We also had the view from a different group that in order to compete, companies must be able to rehire the very highest qualified people so that we have the very best possible workforce.

Looking at your presentation here, you are very strongly saying that seniority rights are beneficial to everybody in the long run, and I think that is the case. But the problem is, as we make the change, there are more people in the designated groups who are going to be last hired and first fired, so that there may be problems when it comes to actually implementing employment equity—getting over that hump, if you like. So I just wondered how you would suggest we deal with that problem or whether you would just leave it to time to take care of it.

**Mr Shell:** In an expanding economy, the question wouldn't be needed. What we have is a minimally expanding economy, I say graciously. In a minimally expanding economy, we have to balance competing rights. We all agree that employees in the workplace didn't do the hiring, and so we can't carry the burden of achieving change in the workplace and put it upon those employees. First of all, to do so would be to fundamentally interfere with contractual rights. On the other hand, where seniority systems contravene the Human Rights Code, and I will be the first to say that there are many seniority systems that may well contravene the Human Rights Code, we cannot enshrine those seniority systems and say they are insulated from employment equity principles and they are not barriers.

So as you will hear from the Ontario Federation of Labour and as you saw yesterday in Mr Hargrove's brief, the labour movement is of the view that the language suggested in that brief, which I've summarized to some extent in our brief, is in fact the position that we adopt. When it comes to hiring, people obtain seniority equally without regard to any distinction. They obtain it because they are there. We count time. It is statistically verifiable. Everybody is treated the same.

When it comes to promotions etc, where such systems might contravene the Human Rights Code because they are systemically discriminatory, they will and should fall. Unions may be dragged before the commission in trying to defend those systems and boards of inquiry under the Human Rights Code will rule as to whether there is adverse-effect, silent, insidious discrimination

built into the collective agreement language, and if it is, those systems will fail. We support the protection of seniority as long as it is not contrary to the Human Rights Code. We do not support unlawful, improper, discriminatory seniority systems, period.

**Ms Carter:** But could this not be a cumbersome way of dealing with it, leaving it to the Human Rights Code? You were expressing strong support for systemic ways of dealing with problems rather than dealing with individual cases, and you seem to be to some extent contradicting that.

**Mr Shell:** We don't know how somebody can decide, without affording the party the opportunity to say, "No, you're wrong, it doesn't have a systemic discriminatory effect," that a collective agreement that may have been negotiated in 1963 and that may have been working quite fine since 1963 has an adverse discriminatory effect without affording perhaps the company, which may want to defend the language, and/or the union, which may want to defend the language, the chance to come and defend the language and to defend the statistical background. We don't know how one can just dictate, if you like, that this is bad language, unless the state wants to rewrite collective agreements. Lately they have been involved in that process. Our view is that collective bargaining and seniority questions should be left to the parties as long as the parties are capable of developing lawful and effective solutions.

**Mr Derek Fletcher (Guelph):** Thank you for your presentation. I'm pleased to note that the Steelworkers are fully endorsing employment equity, whether this is the plan or not. I know the hard work that the Steelworkers have put into a lot of their employment equity, as you were telling us before. Unfortunately, with my job, I don't think I have the right to recall if I get laid off at the end of this term. There are a lot of things that were said—

**Mr Shell:** You need a bargaining agent, Mr Fletcher.  
1040

**Mr Fletcher:** Darned right. Local 1 MPP, I know.

**Mr Shell:** Somebody who can negotiate a recall provision that's automatic.

**Mr Fletcher:** I'll talk to Leo about this. As far as Bill 79 being voluntary, as you say, it's voluntary, and a lot of your points I agree with, and coming from the labour movement I know exactly where you're coming from and I agree with you wholeheartedly on many of your points—not all of them; on many of your points. The one about the voluntary sort of thing that you were talking about with the employment equity, and with the employers who have to set their goals to eliminate barriers and set up the qualitative goals, if they don't conform to this, if they don't do this, then the tribunal can ultimately fine the employer up to \$50,000. There

are other sanctions that can be put in place. I don't see this as being as voluntaristic as what you were just saying.

**Mr Shell:** Maybe I should explain.

**Mr Fletcher:** There is a little enforcement there.

**Mr Shell:** You set goals that you know you can meet. Nobody evaluates whether the goals which you've set correspond in any way to the labour market in which you are located. So you set goals that are relatively low. Indeed, you might say: "We're not hiring anybody. Times are tough; we're not hiring." At the end of three years, it turns out they do hire. They hire six people. They have exceeded whatever their goal was. Nobody, as I read this bill, evaluates the plan; indeed, under this bill, as you will see, nobody gets the plan. Nobody gets the plan, never mind evaluates. If you are a woman who was not one of the six hired, because they hired six white men, and you applied for the job and you were denied the job, you don't have access to the plan. It's not posted; it's not centrally maintained; you don't keep it; it's not analysed; and if you wanted to complain about it, you're then into a bureaucratic mess to try to get the plan upon which to make your complaint. If you are an employee already in the workplace, denied a promotion, there is provision for the plan to be available to you.

**Mr Fletcher:** Now, when a plan is put in place, I understand that the union—

**The Chair:** Mr Fletcher, I'm sorry to interrupt, I have been somewhat flexible because—

**Mr Fletcher:** Because the Liberals weren't here.

**The Chair:** —the Ontario Women's Action on Training Coalition has cancelled out and the people who would be here at 11, CUPE, are not yet here, so we could start earlier. That's why I've been flexible. I've given some time to both caucuses. I would like to allow Mr Curling an opportunity to also raise some questions, if he would like. Are you interested in doing that?

**Mr Alvin Curling (Scarborough North):** Very much so.

**The Chair:** All right. Before I do that, I will allow one more question on this side. Do you wish to follow up on that or to allow Mr Winninger to ask a question?

**Mr Fletcher:** Well, it's not a question. It's just a follow-up and then I'll pass the question.

**The Chair:** No, you cannot. Either you allow another member or we just—

**Mr Fletcher:** Oh no, I'll allow another member. I was just going to say to the witness that—

**The Chair:** Mr Fletcher, we need to move on.

**Mr Winninger:** He wanted to finish his question.

**Mr Fletcher:** No, it was just to finish my comment.

**Mr Shell:** I would just say, Mr Chairman, I'm happy to stay as long as people want to engage me.



**The Chair:** I understand that, Mr Winninger.

**Mr Winninger:** I'll be awake till midnight. I certainly found your presentation a riveting one. I did want to come back to the seniority issue that Mrs Carter also dealt with. Unlike the Steelworkers, seniority is no guarantee of permanency in our position as members of the Legislature, nor is merit necessarily; witness the longevity of some opposition members.

In any event, you've indicated a case in point, Placer Dome, where seniority was balanced against affirmative action for aboriginal people, so clearly you're a cosmopolitan person and you accept the fact that sometimes competing interests do have to be balanced.

I come back to your point about the exclusion of companies under 50. Aside from the argument of administrative inconvenience—and I give you one example, the dry cleaner I go to, which might have two full-time employees and two part-time employees, will not have a human resources department in the back of the shop to administer what can be in some cases complex employment equity plans. So there is that argument, which I think you might give credence to.

Another argument is perhaps a statistical one. I was surprised to hear you say that the majority of companies that are unionized by your organization are under 100, yet I have reason to believe that those companies under 50 employees on the whole probably have the highest proportion of designated groups working in their workforce.

I wonder if you could come at some of the points I make and perhaps clarify how we might better resolve seniority rights with affirmative action initiatives, because my fear is that seniority preserves an unfair job classification system for the designated groups.

**Mr Shell:** There are at least four questions built into your comments. I will try to respond very quickly.

Yes, you're right that the Steelworkers is capable of distinguishing between and managing competing rights. In the Placer Dome agreement, notwithstanding lesser seniority, aboriginal people were credited with more rights except when you review that agreement with respect to layoff and recall from layoff. Job security rights, you will not be surprised to hear, are uppermost in the minds of employees. They appear to be uppermost in the minds of members of the Legislature as well.

With respect to your comments about the small employer: We do organize largely the 100 and less. That's where we are organizing, that's where we are having successes and that's frankly what's available to be organized. There are certain parts of Ontario, particularly areas in Mississauga and Toronto, where it is correct that some small employers paying sometimes minimum standard wages have employed large numbers of persons from designated groups, particularly women

and very often visible minority women. That's true.

But one of the major issues is not only in Ontario in the south, in metropolitan Ontario but elsewhere in Ontario where wages are not low, in the high-specialized, high-skilled industrial and high-tech environments where we are not seeing that same representation of the workforce.

Just because an employer is hiring lots of designated group members is not, respectfully, a reason to exclude all employers from the obligation to comply with the employment equity bill. An employer who is doing it is going to have no problem filling out the forms.

Now, about the forms: "What a mess; what a mess the forms are; what a mess the obligation to report is; what a burden to the small employer." That's the argument. If they haven't made it yet, they're going to come in and tell you that it's going to cost and bankrupt all of them to have to comply. They all pay tax also. Right? They all fill out forms. That they have to measure and evaluate the workforce is simple if you're a small employer. If you have four employees, it's real simple to figure out how to fill out the forms for the four. I support the simplification of the reporting process. Our union doesn't think it should be a bureaucratic burden on employers. Where there's a will, there's a way.

The problem is not modified reporting. That isn't the problem in Bill 79. It's not that they report in a modified way; it's that they are free from goals, timetables, results, effects, evaluation. That's the problem, and if they're under 50, they're free from everything. That's the problem.

Finally, on your last comment respecting seniority: We think seniority is the most important equalizer in the workplace. If we tinker with it under the guise of employment equity, we can expect unilateral and arbitrary employer conduct to selectively impact on workers, number one. Secondly, the fact is that individuals have certain inchoate, now contractually bound, rights. They're called seniority rights. They are the property, if you will. They are of the interest of the employee. The employee has had it for 15 years. It's been bargained on his behalf, sometimes struggled, sometimes struck about.

1050

If we are to simply say with a pencil that because an employer elsewhere may have engaged in systemic discrimination, therefore your seniority rights no longer matter, we can expect employees to lose confidence in the contractual process that produced those rights to start with, and we can expect them to wonder about the validity of the bargaining agency process, about their union and about collective bargaining in principle. And that must not be the consequence, the legacy, of Bill 79.

**The Chair:** Mr Curling.

**Mr Curling:** I have the rest of the time, do I?

**The Chair:** The rest of the five minutes.

**Mr Curling:** I have no questions.

**Ms Margaret H. Harrington (Niagara Falls):** I have a question.

**Mr Shell:** I have a question for Mr Curling.

**Mr Tilson:** I assume that's said because we've been with this person for an hour, and I think there'll be other delegates—

**The Chair:** Fifty minutes.

**Mr Tilson:** —who will be rather concerned that they haven't had the extra time as well. It's rather unfair.

**The Chair:** I did explain why we did that.

**Mr Shell:** Mr Tilson might view it as discriminatory.

**The Chair:** One committee cancelled and we could have recessed. One committee cancelled and the other delegation, CUPE, was not here. It may be out there, but was not yet here. That's why we extended the time to you and to them. We were going to give Mr Curling the rest of the six minutes that is still left to have that opportunity, if he wished. That's why we did that.

**Mr Curling:** I have a point of order there. I would like to make a suggestion that when we have a cancellation we could maybe bring the minister or the minister's staff forward for some of those questions we'd like to ask. Let me finish my point.

**The Chair:** It's not a point of order, though. I will allow you to continue if you think there are further points that you want to make, but it's not a point of order.

**Mr Curling:** I could direct a question to him and say the same thing. I'm just trying to be helpful. Why I say this is we didn't want to encroach on the presenters' time when they come to ask some of the administrative questions, and we went through this the last time, so I was just trying to suggest that when a time comes for cancellation, maybe this is an opportune time in which we could then ask some of the administrative questions to the bureaucrats.

**The Chair:** To be fair to you as well and to the rest of the people who are listening, you were not here to ask those questions even if you wished to ask them.

**Mr Curling:** I think that is all irrelevant. I'm just making a suggestion.

**The Chair:** It's not a point of order. If members did want to ask questions of ministry staff, we have done that already. We can continue to do that.

**Mr Tilson:** Let's do it now. I asked a question yesterday that I hope you will allow time for the ministry staff to come forward. I asked a question on the issue of excluding police services boards from this legislation. I'm still waiting for you to allow the minis-

try staff to come forward and discuss that issue.

There are other questions I've asked for an opportunity to speak to ministry staff on, and you've never given an opportunity for them to come forward and do that.

**The Chair:** Mr Tilson, you are being completely unfair. The other day you asked a question of ministry staff, and we allowed the ministry staff to come forward and the question was answered. I don't know what you're referring to.

**Mr Tilson:** That's not quite true. The answer to the question was, "I will get back to you tomorrow." Tomorrow has come and gone, and you've never given that person an opportunity to come forward.

**The Chair:** It isn't that I will get back to you on that tomorrow. I understand you may have asked a question for which an answer was to be supplied, and as it is prepared, we'll give that to you, but you didn't ask me to submit it to you.

**Mr Tilson:** The issue was that this individual was to come forward to this committee. It was asked by all members of the committee. Mr Wiseman asked similar issues. He wanted a copy of the section of the Police Services Act so that we can compare the two pieces of legislation, a very important issue, because this issue is being raised by many, many delegations. I think this committee should be informed on that subject, and I submit that members of this committee are not informed on it. We need to spend time on that issue.

**The Chair:** Mr Tilson, if you've asked something, we'll check Hansard to see what request you've made. We'll follow it up and provide that information to you.

**Mr Tilson:** Thank you, Mr Chairman.

**Mrs Witmer:** Mr Marchese, I'm extremely surprised at the action you've taken this morning. I was under the understanding that we had committed and shared with each individual or group making a presentation that they would have 30 minutes.

I believe it is totally unfair to all of the other representatives who are going to be making presentations to allow one individual or one group to go beyond 30 minutes, and I think it was most inappropriate. There was no consensus of this committee. When I've served on other committees, if there's a cancellation, we usually take a time out. It's most inappropriate that you would give this individual or any group more than the 30 minutes that we had decided each group could have.

**The Chair:** Ms Witmer, several points: I allowed your caucus 10 minutes. If you're saying to me I should not have, I will take that into advisement for the future.

I hear what you're all saying. The next time, we will advise every caucus of the time limitation. I will advise everyone in advance that there's a cancellation and that the next group is not yet here, and we will simply have a recess for that time. So I take your points into advisement and we'll do that for the future.



**Mr Tilson:** Point of order, Mr Chair: Just for clarification, you indicated to our caucus that we would have five minutes, not 10 minutes.

**Mrs Witmer:** Yes, you did.

**The Chair:** You are absolutely right that there were five minutes per caucus. I had allowed 10 minutes, of which you probably would have known that, but I will not do that in the future, given what you've all said, and I will announce in advance the cancellations and who is not yet here to make submissions.

Mr Shell, thank you for your submission. It was stimulating, and we welcome your participation.

**Mr Shell:** Thank you very much, Mr Chair, and I apologize that some members appear upset.

**The Chair:** It wasn't your fault. It was the Chair's way of dealing with the matter that caused this problem.

**Mr Curling:** Mr Chair, may I raise a point?

**The Chair:** Mr Curling, we really have dealt with the matter. CUPE representatives are here—

**Mr Curling:** We have not dealt with the matter that I asked about. I have asked you to say that there may be cancellations, and questions were asked on the other side that we should not really interfere with the presenters who only have half an hour. Some take the full half an hour; sometimes we have no questions. When there's a cancellation, we could bring staff forward.

**The Chair:** Mr Curling, staff is here all of the time. There is a cancellation at the end of the day, which is the time we can use for that purpose, so you can reflect on the kinds of questions you want to ask the staff.

**Mr Curling:** You're saying you're refusing the time if there's a half-an-hour cancellation, and if we choose then to bring the staff forward, are you telling me that we cannot do that but at the end of the day?

**The Chair:** I'm going to repeat, if I can, and hopefully you'll be listening to what I'm saying.

**Mr Curling:** I'm listening very attentively.

**The Chair:** Ministry staff is here all of the time. If you have an urgent question at any time that you want to pose, you'll ask of the Chair that we do that. It's very likely that we'll do that.

If you don't have an urgent question to ask, but it does appear at 4 o'clock where there's a cancellation, we will do that. There's half an hour for that purpose.

#### CUPE—ONTARIO DIVISION

**The Chair:** I'd like to call upon the CUPE members for their submission. I want to welcome all of you to these hearings. Just as a point, you have half an hour for your submission. You've heard a touch of the discussions we have had about time, so you may want to decide to take the whole half-hour for your submission or leave 15 minutes for questions and answers. Mr Ryan, you're familiar with the process.

**Mr Sid Ryan:** Yes, I am. We will attempt to leave

some time at the end for questions.

Let me introduce, first off, the people whom we've brought today. On my left is Muriel Collins. She's the chair of CUPE Ontario's women's committee. On my right is Joan Stephenson. Joan is the chair of CUPE Ontario human rights. Irene Harris is the equal opportunities representative, and on her right is Jim Woodward, who is the legislative assistant. I'm Sid Ryan, president of CUPE Ontario.

Before going into the reasons for seeking amendments, we want to give you some background on the members that we represent.

The Canadian Union of Public Employees represents over 160,000 working men and women in this province in all regions. CUPE's members are mostly employed in the broader public sector. Our constituency includes municipal employees, hospital workers, social service workers, educational support workers, workers in nursing homes and homes for the aged, utility workers, university support workers, library workers and day care workers. Our locals range in size from less than 10 members to greater than 20,000 members.

Many are members of the four identified employment equity designated groups. However, our members are employed in workplaces that are not fairly representative of the population makeup of their communities. Day care, nursing homes, libraries, social services and homes for the aged locals are almost exclusively female job ghettos. This is reflected in the statistics, which show that women are segregated into a small number of lower-paid occupations. Members of racial minorities are also segregated into few workplaces and in lower-paid occupations. In no areas are CUPE workplaces representative of the first nations population of this province. Disabled members are not evident in any workplace in any significant numbers.

#### 1100

As a union, we do not have control over hiring practices which have historically segregated our members into jobs according to their genders and their race. We have limited influence over who gets promotions in unionized jobs. This influence only comes from collective bargaining rights which respect the length of time an employee has been with an employer. In most cases, these cases are affected by the employer's right to determine whether or not an individual is deemed to be qualified for a position.

CUPE has made workplace equity for its members of designated groups a priority. We've done this through organizing drives, bargaining rights for protection against workplace harassments, putting special influence on bargaining involving wage improvements and seniority rights for members on the lower end of the wage scales, bargaining training opportunities and being part of workplace employment equity committees.

Some general comments about Bill 79: Recognizing that broader public sector workplaces employ a large proportion of designated group members and a significant percentage of Ontario jobs, CUPE has urged this and previous governments to pass employment equity legislation. We want our workplaces to reflect our communities. We want to end the practice of excluding some groups and segregating other groups according to gender and race. We want current members to have discrimination-free workplaces. We want employers to put fairer hiring practices into place.

Instead of effective equity legislation, we've been given Bill 79, which, in our opinion, cowers to the pressure employers have applied for legislation requiring very limited demands on their management rights—rights which have upheld discriminatory practices.

Instead of clear, user-friendly legislation, we've been given a complicated bill and complicated regulations which serve to weaken Bill 79 and give further rights to employers. Instead of mandatory goals and timetables based on percentages provided by the commission, we have very much a voluntary approach with no requirement to file plans. Instead of stronger bargaining rights, which we need to strengthen and increase employment equity gains, we've been given legislation which works against us at the employment equity and collective bargaining tables.

Bargaining rights in Bill 79 are significantly reduced from rights found in other pieces of legislation, for example, the Labour Relations Act and the Pay Equity Act. The latter act clearly spells out that bargaining agents and employers are required to bargain in good faith a pay equity plan. Why are employment equity plans not seen as significant and only require some components being carried out as joint responsibilities of the two parties? This watered-down approach gets further weakened in the regulations.

We note that the workforce survey, to us a significant part of the employment equity plan, can be skipped over if the employer has done a survey prior to the legislation being passed. While the regulations include some criteria for such surveys to be used, we are appalled that this government has supported the bypassing of bargaining rights under any conditions. It is one thing for a union and an employer to decide to use data drawn from an earlier survey to assist with the process, but the regulations go much further. They allow the employer to use the survey, even if the union did not approve the exempting criteria.

Further eroding bargaining rights, the regulations allow employers to use old employment equity systems which are done prior to the legislation being proclaimed. All aspects of employment equity plans, including workforce surveys and employment systems reviews, must be done according to the legislation and in partnership with unions and non-union employee

representatives. We urge your committee and the government to recognize that the right to bargain must be respected for employment equity legislation to be effective. We are concerned about the recent trend towards taking away this role of unions. The recent amendments to the Pay Equity Act delivered a model for proxy comparators which limits our role in identifying male comparators in other workplaces.

Most recently, the government passed Bill 48, the so-called social contract legislation. This law further weakens bargaining rights, cuts wages from a sector where most jobs held by designated group members are found and takes away organizing rights obtained by the Labour Law Reform Act. This must not be repeated in Bill 79 or its regulations.

I pass the question on seniority rights to Irene Harris.

**Ms Irene Harris:** Yes, it's on the following page 4, section 3. We're now going into some specific changes we'd like to see made to the bill and will also comment on some changes in the regulations, which we know you're not hearing, but we want the regulations folded into the bill and so will offer some comments as well.

With regard to seniority rights, we're looking to see section 5 changed by adding subsection 5(2), which talks about seniority rights with respect to layoff and recall, the words "and are deemed to be part of any employment equity plan prepared in accordance with this act and the regulations."

We would like to also see a new subsection 5(3) added which says: "Employee seniority rights that are acquired through a collective agreement or an established practice of an employer with respect to any term or condition of employment other than those enumerated in subsection (2) are deemed not to be barriers to the hiring, retention, promotion or treatment of members of designated groups unless such seniority rights are found to be contrary to the Ontario Human Rights Code by a board of inquiry appointed under the code."

We urge you to support these additions to the section dealing with seniority rights so that those seniority systems which do not discriminate are not unnecessarily changed and those which do discriminate are changed so they are no longer discriminatory. We recommend these amendments for a number of reasons.

Firstly, it is our view that the employment equity legislation must recognize that discriminatory hiring and promotion practices are the problem. Often seniority is not the overriding factor when decisions are made about promotions. In many cases, seniority will need to be strengthened. Stronger seniority protection and clearer procedures for promotions mean designated group members are not denied promotions because of a discriminating employer.

However, despite this, many of our local unions have been told by employers that employment equity legisla-



tion means that everyone will lose their seniority rights. Since we do not believe this to be the case, this threatening suggestion only leads to unnecessary fears and myths about the real benefits we all will gain through employment equity. We fear this kind of debate during the development of plans will put us on a negative path. This will be avoided by the legislation setting out clearer ground rules for seniority clauses which do not discriminate so that they remain as they are. Ground rules are needed for seniority systems which do discriminate so that we can get these changed. The amendments we've put forward will resolve all of these concerns.

**Mr Jim Woodward:** At the top of page 6, we are asking to change subsection 14(3), more than one bargaining unit, so that employment equity plans are developed following existing collective bargaining relationship structures.

Bill 79's directive to have one employment equity plan, whether or not the workplace has more than one union representing workers, has raised many questions. Instead of answers, more problems with this model are found. While the establishment of a joint committee was a compromise answer, the regulations with regard to how this committee would function has only raised more problems. The model created by the regulation is only one of many which could exist. So why is the government so intent on defining which model it has to be? Why not let the parties in the workplace determine this with current bargaining structures as the starting point? While the intention of legislators to spell out these models for us in regulations is honourable, it is also paternalistic, unpractical and disrespectful of the ability of workplace parties to get the job done reasonably and with the help of mediation where needed.

Allowing employment equity plans to be developed along existing collective bargaining relationship structures also recognizes that employers have workplace rules and barriers which differ between groups of employees. Each union in a workplace bargains its own collective agreements. Each agreement has different classification systems, wage schedules and clauses which affect conditions of employment. Employers often have qualifications, recruiting procedures and testing for promotions which differ between groups of employees. Once each group has completed its employment equity plan, these various plans need to be shared among all the groups in the workplace. This will let all employees know about targets set in all jobs as well as training programs. This will also facilitate movement of employees into jobs across the employer's establishment.

We are asking to change all appropriate sections of the bill so that employers in an establishment in Ontario with an annual payroll greater than \$300,000 are covered by the legislation. We do not agree with the

notion that employment equity is only needed by larger employers. Surely there is need to recognize that discrimination exists in all workplaces and that we need to identify and get rid of this discrimination. Private sector workplaces with 10 to 50 employees also need to be included. Reference to regulations giving the Lieutenant Governor power to exempt employers also needs to be deleted from Bill 79.

We ask you to turn to page 9 as you've probably heard the rest of our submission through the OFL. If you'd just turn to page 9, then somebody will pick it up from here.

1110

**Ms Muriel Collins:** Page 9, section 4.3, refers to the use of previous surveys. Sections 7, 8 and 9, use of previous surveys, need to be deleted. The survey of the workforce is an essential part of the employment equity plan. It is here that the parties developing the employment equity plan work together to understand the purpose of the questions and in turn ensure high returns on questionnaires by jointly promoting the whole process. Analysing the results is also important to understanding and identifying barriers which have segregated workers according to gender and race.

Bill 79 includes the workforce survey as an item coming under joint responsibilities of unions and employers. This regulation violates this part of the union's right to exercise this important part of joint responsibility. Many employers, especially those who did surveys under the federal legislation, did not involve unions, even though that opportunity existed.

Could you please turn to page 10, section 4.7. Sections 16, 17 and 18, use of previous reviews of employment policies and practices, are as offensive as the sections on resurveying. These sections allow employers to use employment equity reviews which were done unilaterally prior to the proclamation of this legislation. This strips us of bargaining rights laid out in the bill. Employers' employment systems reviews often miss significant barriers. For example, many designated group members are held back from non-traditional jobs due to a lack of in-house training programs.

Sections 21 to 25, goals respecting the composition of the employer's workforce, and all sections which deal with numerical goals need to be amended so that this purpose of the legislation will be met. Numerical goals and timetables are a key element of employment equity legislation. Goals need to be based on the numbers of designated group members in the working-age population in the region in which an employer is located. The numbers can be given in percentages but must be provided by the Employment Equity Commission. Without this approach, the legislation becomes a voluntary effort which we know from history is useless.

During the extensive and lengthy consultation process on regulations, a compromise was reached between

employers, unions and community representatives regarding the establishment of goals and timetables. The compromise acknowledged that long-term goals will reflect the working-age population, that numerical goals will be set according to commission percentages and that percentages for goal setting would be based on a hybrid model with working-age population being the percentage of some occupational groups and enhanced availability data being used for other occupational groups. This needs to be incorporated in Bill 79.

We would now conclude by Joan Stephenson concluding.

**Ms Joan Stephenson:** Statistics show that systemic discrimination is alive and flourishing in our workplaces. Women are segregated into a few occupations, as are members of racial minorities. Those with disabilities and native people have disproportionately high levels of unemployment. Voluntary employment equity doesn't work. We need legislation which requires a systematic approach to identifying and getting rid of the obscure and hidden causes of discrimination.

When in opposition, the current Premier put forward a private member's bill for employment equity. That bill was well thought out, user-friendly and would have been effective. Had the NDP passed that bill when it was elected in 1990, we would be well on our way to implementing employment equity. Instead, because of delays, overdrawn consultation processes and bending to the pressure of the business community—the government—we are still writing briefs about employment equity legislation instead of using legislative rights to implement employment equity plans.

Unfortunately and sadly, we see that the business community has been listened to more than the labour movement and community representatives. We urge this committee and the government not to let us down on this very important and significant legislation. Do not set such a low standard that it causes us to lose the gains which must be achieved if we are to fight the forces of discrimination. Employment equity is far more important than the preservation of management rights which serve to maintain the status quo because it is the easier road to take.

We urge you not to let us down on this important law. We urge you to support the amendments we have sought and put before you here.

**The Chair:** There are four minutes per caucus. We'll begin with Mr Fletcher.

**Mr Fletcher:** Thank you for your presentation. I understand and recognize the work that's been done by CUPE as far as employment equity is concerned in the workplace. Some of your amendments are very good. One of the purposes of this committee is to listen, as we go along in this process to its finality of making some of the recommendations and some of the amendments,

so we do have a long process to go through.

One of the things that was interesting was the resurvey if an employer wishes to use an old survey. You say you don't have any rights as far as that's concerned. I do know that in the regulations, if an employer wishes to use an old survey and a bargaining agent disagrees with that, then the employer cannot use it. What the employer would have to do is then go to the commission and the commission would make a determination as to whether or not the survey was meeting the criteria of the Employment Equity Act. If it were not meeting the criteria, then a new survey would have to be done.

I don't know if you've read that in the regulations. I know it seems convoluted in some ways, but I think there is some protection there as far as the union being involved in the employment equity survey that's supposed to be done is concerned. Does that somewhat meet your needs, or is that way out?

**Ms Irene Harris:** I'd like to comment on that. I think we're reading the regulations very differently, because the way you're presenting it to us would suggest that if we looked at the old survey and said, "No, we don't want to use it; we're going to go and bargain and start from scratch," that would be one thing, but what the regulation sets out is certain criteria that the old survey has to meet. We would have to look at the survey and then look at the criteria and the onus would be on the union to prove that in fact the old survey didn't meet the criteria that are set out in the regulations.

It's a very cumbersome, difficult process. It has the effect of putting all local unions into being instant policy analysts who can sit down—seriously—and figure out the criteria. You're going to get case law developing on what the criteria actually mean, when they do and don't count. You're going to make it so impossible that to us it has the effect of not giving us the right to bargain a survey.

As an example, we had the Pay Equity Act, where we learned a lot. We've had practical experience. In that example, it would have been as if the Liberals had said, "If there's an old job evaluation plan in place, if you can't prove there's something wrong with it for pay equity, then you have to use that one." That would not have worked. In a lot of cases, that would have just made the whole process a lot longer.

What we're saying is that if the bill says that we have joint responsibilities to do the employment equity plan—the survey and the employment systems review to us is a very key part of it—and you're all of a sudden putting the onus on us to prove that the work employers have done does not meet a certain set of criteria around which no case law has been developed, you're right away putting obstacles in front of us. We see it quite frankly as taking away our right to bargain how those



surveys are done. In a lot of cases where employers and locals work together, we'll probably use surveys or use the employment systems review, but I think that's got to be something we work on together.

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**Mr Curling:** Mr Ryan, thank you and your delegation for coming forward. It's a fairly interesting brief. I just wanted to touch first on the conclusion part, where your brief spoke about really that it is more or less weak legislation and how disappointed you were that not even the regulation would support an explanation to the legislation, but more confusion. Would you say that weak legislation is worse than no legislation?

**Mr Ryan:** I don't want, to be honest, to get into the trap of will we have to accept something less. The purpose, I guess, of this committee and of these hearings is to make sure that we don't have weak legislation. I think what we're doing here is highlighting the weaknesses in the legislation such that it is an appropriate piece of legislation to be bringing into the workplace and making sure we get rid of the systemic discrimination that we've lived with for the past 50, 60 years.

I don't think, to be honest, it's very helpful to say that if we don't make any changes to it at all, let's scrap the legislation entirely. I don't believe we should be scrapping the legislation. I believe it's your job as legislators to make sure that we have the best possible legislation and that you listen to the submissions that are coming before you and that you listen to us when we tell you that there are some significant flaws in this legislation and that it's within your power and within your jurisdiction to change this. That, to me, is a more constructive way of looking at it than saying, "Let's scrap it if it doesn't meet everybody's criteria."

**Mr Curling:** No, I don't say that. I don't say to scrap it. I just said whether you feel that weak legislation is worse than no legislation. The reason I ask you that is that you have been in arbitration quite often and many times there are semantics and words and definitions, and who suffers actually in all of this are the designated groups that need this access to fair treatment. The fact is that we want clear and precise legislation and that's why I said it's so important, and I'm glad you used all the words that I found very comforting. I hope it's comforting to the government, that it listens, and that it's listened to and that employers are treated in a very fair way and employees treated fairly, and those designated groups are being looked upon as the victims who have not been served properly.

**Mr Ryan:** I wouldn't be sitting here today if employers had been treating employees fairly for the past 50 or 60 years. We wouldn't be sitting in this room worrying about employment equity legislation. We wouldn't have the systemic discrimination that currently exists in our workplaces if employers were treating employees fairly. So I'd be careful about what you say

about employers and how they're treating people.

**Mr Curling:** The point I'm saying is that legislation must be fair, not because it was imbalanced at one stage and we're going to take advantage of the other. We want some fair legislation. My question, though, is that at the table forming the employment equity plan there are union people and there are employers, but the non-unions are not at the table and being represented there. Do you feel that the non-unions should be there also—

**Mr Fletcher:** Yes, they are; section 15. Read it.

**Mr Curling:** Could you give me a chance, Mr Fletcher? You'll get your chance.

**The Chair:** Continue, please.

**Mr Curling:** —that they should be there also in order to assist in bringing about a good employment equity plan?

**Mr Ryan:** No question, on a workplace-by-workplace basis, it's absolutely imperative that employees, whether they be organized or non-organized, be there to participate. But it's my understanding that in those non-organized workplaces, the legislation compels the employer to sit down with its employees regardless if they're organized or not organized, and jointly work out the plans.

**Mr Curling:** I'd just use the word "consult."

**The Chair:** Ms Witmer.

**Mrs Witmer:** Thank you very much, Mr Ryan, and the members of your group. I really did appreciate it very much. It's a very well written document, it's very thoughtful and I can tell you that I actually wish I had more than the half an hour. There are many points here I'd like to discuss with you and get more information about, but I would agree with you: You're suggesting that we would change subsection 14(3), that there be more than one bargaining unit. I know that is an area of concern for other employee groups as well as the employers. Would you have anything more specific that you wanted to say, because I think that really is a major issue? I think it's going to determine how much flexibility there is within this plan for both the employer and union groups.

**Ms Irene Harris:** Not too much more now than what's here, except that our thought is if you at least start doing your employment equity plans based on current bargaining structure and how the groups are currently done, how they're organized in the workplace, once the plans are completed, it's going to be important for groups to see each other's plans, so that if I'm a woman working in a secretarial group, I know what opportunities there are in the male-dominated unit and what kinds of training programs are available. But our concern is that if you try to lump us all at one big table at the very beginning and try to work it out, you make it such a huge, massive, impossible job to do that we're not going to get it done right.

**Mr Tim Murphy (St George-St David):** Sounds like the social contract.

**Ms Irene Harris:** Yeah.

**Mrs Witmer:** That's a problem. I hope the government will give very serious consideration to that amendment. You mentioned here, regarding the use of previous reviews of employment policies and practices, that there has been a lack of in-house training programs, and I think that has been a flaw. I would agree with you. I don't think we're doing enough to prepare people for the non-traditional jobs. I guess I would say to you, what could the employer community be doing to help the designated group members access these non-traditional jobs, because I think it's a real barrier?

**Ms Irene Harris:** We've seen in a lot of our workplaces where designated group members, with very little in-house training, could end up accessing promotions a lot better. For example, a lot of our municipal locals have pointed out that you often get assistant accountants, and the accountants who are higher paid tend to be in the male jobs; the assistants are the women. If the women go and take a part-time course, if you need any apprentice type of work to be done as part of the course, you could do that on the job at work, then when there are openings for that higher level position, it's an easier transition. We think every workplace has hundreds of examples like this where it would just take a little bit, and we would hope that with employers, we'll be able to identify a lot of those kinds of things in an employment systems review.

Our experience is that the ones that have been so far have not dug out these kinds of examples, and that's why it's so critical that we be there right at day one helping to figure out the employment systems reviews to identify these kinds of opportunities, because they weren't coming out in the old system, and I think that's what happens when the parties aren't working together.

**Mrs Witmer:** Thank you very much. I really did appreciate the presentation; excellent suggestions.

**The Chair:** I want to thank all of you for coming and for taking part in these hearings.

BANGLADESH CANADIAN  
SOCIAL AND SETTLEMENT SERVICES

**The Chair:** The next delegate is Abu Alam, Bangladesh Canadian Social and Settlement Services. I want to welcome both of you. Perhaps you might introduce your colleague. You have half an hour for your presentation. You may want to leave 10 or 15 minutes or longer for questions and answers.

**Mr Abu Alam:** With me is my friend and the director of our organization, Mr Moin Ahsan. He's going to answer any questions the panel might have after my presentation.

Thank you very much for giving us the opportunity to speak on Bill 79. As the chairperson of the

Bangladesh Canadian Social and Settlement Services, I would like to put forward some growing concerns our community is experiencing every day in their professional lives.

Since our organization has been involved with community services for Bangladeshis in Canada, it gives us the opportunity to learn more and more about these problems. To be more precise, we may say that their professional as well as their general education are not properly recognized, which only increments the existing problem of employment inequality.

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To the best of our knowledge, there are about 15,000 to 20,000 Bangladeshi living within Metro Toronto and vicinity. We are newcomers and voters. This growing population is a mixture of highly educated professionals and generally skilled persons. If we look into any data or information, there is hardly any representation of Bangladeshis in any board, commission or government agencies so far.

Our member as well as our organization strongly believe, given the scope and opportunities, they will participate and contribute in the development of Ontario and Canada. We also believe this is a two-way process. We can only contribute significantly in the society when we have been given the opportunity. Effective employment equity legislation would provide this.

I, on behalf of visible minorities, particularly the Bangladeshi community, am urging the present government and political parties to sincerely look into this matter and implement the policies immediately. This will not benefit the particular community, but the society and the country as a whole.

Our organization and community always support a multicultural, diverse Canada, one of the prime policies of the country. We found this Bill 79 can be an effective tool to carry out employment equity policies of the government. We are confident that this bill will be fully supported and endorsed by the Parliament as soon as it is extended. This will help make Ontario a better place to live and work for all of us.

I have another point. The consultation draft had defined the designated groups in four categories, that is, aboriginal people, persons with disabilities, members of racial minorities and women. Members of racial minorities are defined as people who, because of their race or colour, are a visible minority. I would like to suggest the broadening of this definition of racial minorities to include the otherwise invisible minorities within such visible minority groups. Race and/or colour do make a minority community visible, but do not necessarily address concerns of the various ethnic components within an apparently similar race or colour.

To overcome deprivation of these unique ethnic groups or races, and for the protection of such, the



definition ought to be broadened to accommodate linguistic and cultural minorities. Language being the principal means of communication for any race or colour, attention has to be paid to bringing about a linguistic equilibrium within the workforce to achieve a more balanced employment equity as envisaged in Bill 79.

As a representative of an organization that represents minorities within a minority, I would urge the committee to evaluate my suggestion and incorporate provisions within the regulation to protect the rights of communities such as ours. This can be done by inclusion of these groups in the qualitative measures of the bill, so the people who are accented, who wear traditional dress, who celebrate alternative days off, can do so without harassment, without fear of reprisal. Thank you very much.

**The Chair:** Thank you, sir. There are approximately seven and a half minutes per caucus. We'll begin with the official opposition.

**Mr Murphy:** I'd like to thank you for your presentation. I very much appreciate it. I want to talk a bit about the concept of merit in this bill. As you know, as it stands now, the bill does not have any provision that says merit continues to be an overriding consideration.

I was reading through some studies done as part of the Canadian Civil Liberties Association. In fact it was interesting to me to note that the level of university education among visible minorities, for example, is higher than among the general population by about 23% to about 14%. That really goes, it seems to me, to the issue of qualifications for jobs. It seems clear that what we're really trying to do and what a bill like this bill is trying to do is to provide the designated groups with the opportunity to have access to those jobs that are available, a fair access and one without discrimination, either intentional or systemic.

It strikes me that if those barriers are reduced, the designated groups by and large have qualifications that would, you know, be sufficient to make them the best for the jobs. What I'm wondering is whether in your review of this you would have any problem with the concept of merit being added to the bill as an addition to the preamble, as something that's still important to hiring for a job, that merit still should be something that we consider.

**Mr Alam:** Definitely merit should be considered.

**Mr Murphy:** Would you see it being something that could be added to the bill without in any way harming the intent of employment equity?

**Mr Moin Ahsan:** I'd like to respond to that on behalf of the organization. I understand that the question was put to Mr Alam.

Our organization does not have any problem with the merit issue. The concerns that, as members of minority

groups, we have are whether or not we are going to be streamlined on the guise of merit. I understand that you appreciate the fact that minority groups do have a fairly higher academic qualification and they thrive to excel in the communities. And merit—definitely there are certain sectors of services that the government offers where merit is an essential factor. It does not matter which colour or which race I am. If I'm not qualified to perform the job, definitely merit comes into play.

But there are some sectors where there are routine jobs that can be handled by people of almost a general basic education. In those areas, if we really emphasize merit that highly, it may affect groups like us where we won't necessarily be getting the same representation. But definitely merit is to be considered.

**Mr Murphy:** If I can follow up, one of the things that does concern me, and I'm not sure that this bill addresses, is that there is a report on access to trades and professions. I'm not sure whether you're familiar with it, but one of the issues obviously is people who have qualifications and have acquired qualifications in other countries who come here as doctors or lawyers and are unable to practise either as doctors or lawyers here because of restrictive provisions in the qualifying procedure. I'm wondering if you have looked at that and whether you would call upon this government to move on that access report as well.

**Mr Ahsan:** Mr Murphy, thank you very much for that excellent point that you brought up. For example, I have had the opportunity to deal with various professionally qualified people who have immigrated to Canada on the basis of their professional skills. Upon arrival in Canada, they have found themselves in a situation where they have to go through different steps of qualification and, in most cases, they have felt that they are being streamlined because their qualifications are not necessarily evaluated in a proper manner.

The qualifications system has a different set of rules or different set of guidelines for different countries. There is no equilibrium in the standards maintained, and definitely that will be an area that this bill could look at. I personally believe that one of the main emphases in this bill should be into that area, to guarantee that professionals who have immigrated to this country do not have to face obstacles in every way to get into what they want to achieve. I believe it is a very strong point you have made and I really agree with you totally on that one.

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**The Chair:** We have time for one more question.

**Mr Curling:** You mentioned also your concern that the subgroups—you didn't use the word "subgroups," but the fact is that there are minorities that are not being recognized in specific terms. I think you used the words "linguistic and cultural minorities" that should be recognized in the bill as a list there. I know it's not in

the legislation, but they tried to identify some of those groups in the regulations. Other groups have come before us. Would you see, for instance, that the Bangladesh group would be recognized as a subgroup in the legislation?

**Mr Ahsan:** Thank you for the question. The intent of making that suggestion was not necessarily to recognize cultural or linguistic subgroups as a national factor. If you say "Bangladesh," that would indicate persons of a political and national origin, but the suggestion is basically based on a linguistic pattern.

For example, when a person is looked at, a person could be deemed to be a black person or a person could be deemed to be a white person, but that does not necessarily address his concerns, because that person could be a minority. I could be white, but I could be of a linguistic and cultural background where I could be a minority. For example, I could be Polish-speaking and I might not have access to information because of my language barrier.

What we try to put forward is that if a linguistic recognition is there, not caught as Bangladeshi or as Bangladesh but, let's say, Bengali is a language. Coming from different parts of the world, there are different languages. Within one community, there could be 10 different languages practised. When employment equity is being examined, if we have linguistic representation as well along with the racial representation, I believe that will only enhance the government's credibility as well as the willingness of people like us to be coming forward to participate in government activities.

**Mrs Witmer:** I'd like to pursue that with you, because different groups have come forward and talked about the subgroupings. Are you suggesting that within the workplace those different subgroupings would be represented as well, as they reflect the face of the geographical community? We talk about the subgroupings, but I'm not sure how we're expected to handle that.

**Mr Alam:** We're not talking about the subgrouping; we're talking about the linguistic barriers we might encounter in the near future.

**Mrs Witmer:** Right, but are you concerned about the identification, where you're simply identified as being a visible minority, without further subgroupings within that particular designation?

**Mr Ahsan:** I'd like to give you a particular example. If people coming from the Indian subcontinent are broadly termed "Indians," then there are groups within the large "Indian" definition: you have people that are Bengali, you have people that are Madras, you have people that are Punjabi etc.

I have noticed that in a lot of literatures we have different languages. For example, in government literature, the leaflets are printed in different languages, and

emphasis is given to, let's say, in Toronto right now within the Indian community the Punjabi-speaking community is more visible, so a preference is given to that language, and that language is there.

But, for example, the national language of the country, which every subgroup ought to be knowing, is not necessarily presented. So that puts up a barrier. So that way, for example, in the Bengali-speaking community there is a huge number of the Bengali-speaking community not only from Bangladesh but also from India, who belong to West Bengal.

Bengali has been a fairly rich language with a lot of background. You must be aware that the Bengali language also got a Nobel Prize away back in 1923 with Tagore.

**Mrs Witmer:** I didn't know that.

**Mr Ahsan:** I don't know if you have heard of the name of the poet Tagore.

I understand that it is going to be very difficult for the government to be able to assign specific allocations for subgroups, but I believe that if a broader linguistic grouping is also done, that way people with linguistic handicaps will have more benefit. They will have more access to information that could make them better citizens.

**Mrs Witmer:** Okay. I would certainly support that. There is mention made of the professions and the trades and the fact that people have difficulties, and certainly I've been working with people in my own community who have had difficulty accessing, for example, the medical profession and other trades. Has that been a real problem for your particular community that you're representing here today?

**Mr Alam:** Yes.

**Mrs Witmer:** In what specific areas are you having problems where you have the skills and the knowledge and the training?

**Mr Ahsan:** For example, you mentioned physicians in particular. We get immigrants who come here who are doctors. They have gone through all the necessary qualifying exams. They have been licensed, but unfortunately they are unable to find an opening in a hospital.

**Mrs Witmer:** That's right.

**Mr Ahsan:** They either have to ultimately move south of the border or to other territories which are not within Ontario, whereas their families and their other support remains in Ontario. We have faced that difficulty, especially in the medical sector.

We have faced difficulty in the legal sector as well. Right now the evaluation process they have in place is based in Ottawa and it is very cumbersome and very cost-prohibitive as well. A person has to apply with a tremendous amount of fee, and then it has to go through different processes of evaluation, and parity has not



been noticed in the evaluation process. I have personal knowledge about that because I happen to be a person who applied as well.

We have experienced almost similar situations with professionals such as accountants. We have encountered problems with engineers. Engineers and accountants have their own designated licensing bodies which have different examination procedures.

For example, if we are definitely getting a person licensed to be a skilled expert, it is understandable that we would want to test them out and see whether the person will be able to perform, but in some areas we did have problems.

For example, we have had problems in another area. We were trying to get, for our linguistic community, a notary public. Now, when I made inquiries, we were told that a person either has to be a lawyer or has to have a specific government need to be assigned a notary public's responsibilities.

For example, in other countries documents have to be sent and they have to be notarized and in our community we do not necessarily have the money or the means to go to lawyers and pay them high fees to get documents notarized which could be done by a person of their community who would understand them better.

**Mrs Witmer:** True.

**Mr Ahsan:** Thank you.

**Mrs Witmer:** Thank you very much. I know it's a real problem in my own community, and those are the areas certainly where the people are having the problems, in those professional areas. So this bill, although it will address some of the issues, there are other issues that we need to address as well.

**The Chair:** Mr Tilson, one final question.

**Mr Tilson:** Some time has been spent with questions to you and your comments with respect to expanding definitions. I think that's one of the major concerns that many of us have on the committee. It's interesting, looking at the definitions in the regulations, what a racial minority is, what a member of a racial minority is. As you know, it means a person who, because of his or her race or colour, is a visible minority in Ontario.

Looking at things like the Police Services Act, 1990, a member of a racial minority means, "A person, other than an aboriginal person, who, because of race or colour, is in a visible minority in Canada that is non-Caucasian in race or non-white in colour."

My question is the question as to: Are those definitions clear enough? There have been comments as to Lebanese, Armenians, Iranians, Jews. Are they visible or are they invisible? Native persons: If a native person is one sixteenth, for example, or one fraction of that, should that be classified as an aboriginal person? Disabled people: The Human Rights Commission has ruled that the wearing of glasses makes me disabled.

That's what the Human Rights Commission says.

My question is: How detailed can these definitions be to adequately protect the people that you and all of us are concerned with?

**1150**

**Mr Ahsan:** Thank you for your question. There are definitely difficulties. This bill, at least to us, came as a positive sign that the government is stepping towards bringing about some form of equality, and definitely we are here today to make representations before the government and this committee so that all possible groups are included.

Now, it is understandable that it will become awfully difficult to describe each and every subgroup within the broad definition. I do agree with you that there are problems with defining aboriginals or defining races on the basis of colour only, but what we were suggesting was to include more explanations to the definition, so that as you have cited the Police Services Act, we would like, instead of having these definitions for each particular act in their own definition, we would want those to be included within the bill here so that a broader definition as an explanation could be added.

For example, when you have the definition of racial minorities, you can have a footnote, "See explanations," and then you can have a broader set of definitions there, like how you subdefine them. I believe that that is the only way to overcome such a major group.

**Mr Tilson:** Thank you.

**Mr Fletcher:** Thank you for your presentation. Like most other groups that have been before us, you agree with the concept and the need for employment equity, which is also nice to see.

I go back to when other groups, other people came to this country: the Chinese, the Japanese people, the Irish people, the Portuguese people, and I could keep going and going because we are a country that is made up of diverse ethnic backgrounds.

Some of the things that have been happening have become societal, and they've just been going on and on and they haven't been fixed. On some of the things this government is doing, such as destreaming in the high schools, we all know that for many people of ethnic background, going to a high school and getting put into a certain area of expertise without actually trying—you were just told that's where you were going, you were streamed in that direction, and that happened to a lot of ethnic people. It happened to a lot of people from low socioeconomic backgrounds, and so we're trying to eliminate that part of the discrimination process in society.

We've also introduced an anti-racism curriculum for schools and we're trying to address the anti-racism and the ethnocultural equity programs in Ontario, so we are moving in that direction.

When I look at some of the things that the government has done as far as Jobs Ontario Training for different things is concerned, this employment equity is part of the package. We have to eliminate racism. We have to eliminate discrimination no matter where it exists in society and the employment equity package is now attempting to eliminate systemic and real discrimination in the workplace.

Some of the things that I've been hearing from the opposition about the definition of minorities: How broad do we make it? There are logistical and real problems with having a broad definition and that's why we have asked for self-identification to be a part of the process. In other words, a person who is employed in a job can self-identify. If I don't look like I'm a minority person just from my looks, I will tell you that I am an immigrant to this country, I was not born in this country, and it would be my job to identify that when it comes to the process. We are already looking at different areas.

As far as your organization is concerned, over the years when your children were born—presumably some of them were born in Canada—and their children, when they grew, were born in Canada, are they still facing the same forms of discrimination that have happened when you were new to this country? Your children who are Canadian-born, and just because of their skin colour perhaps or something else, are still facing it, even though they are Canadian-born, and we have this perception that if you're Canadian-born, well, you're okay, but that's still going on.

**Mr Ahsan:** Mr Alam would like to address that.

**Mr Alam:** Even though our children are born here, according to the provision which is existing now, children need to take your last name. When your children are born here, genetically, they can get the same colour. They're inheriting three things: inheriting our colour, inheriting our last name and they will inherit the difficulties we're encountering at this present time, probably in the future.

**Mr Fletcher:** And the time to stop that is now.

**Mr Alam:** It is.

**The Chair:** One final question, Ms Carter.

**Ms Carter:** I'd like to underline some of the points that my colleague has made, because we were thinking very much along the same lines. I'd just point out that of the five of us sitting here, only one was born in Canada. The other four were all born in the same place, so that's just interesting, and yet we are not forced to think of ourselves as immigrants from one moment to the next.

I'd also like to underline a point that was made earlier this morning, very strongly by the representative from the Steelworkers union, that discrimination is not compatible with hiring on merit, so you have to get rid of discrimination before you can make sure that you are

getting merit as the only criterion on which people are going to be hired. So that is really a non-issue and it's about time, I think, that some of our colleagues stop bringing it up.

**Mr Murphy:** If it's a non-issue, put it in the bill.

**Ms Carter:** Also, education was raised, and I think that we can say this government is bringing into effect a lot of measures which are going to minimize, or hopefully get rid of, differences that people encounter in the educational system that make it difficult for them to have the same chances.

We have actually introduced an anti-racism curriculum into schools so that different backgrounds are highlighted in the school curriculum. We're not assuming that everybody is the same and that children learn to appreciate the different backgrounds that their classmates and others have. We're also bringing in employment equity in boards and within the ministry and development and implementation of corporate anti-racism policies for boards and the ministry. So I think we really are working on some of those things.

**The Chair:** Do you have a question?

**Ms Carter:** Now, one point I wanted to raise as a question: The act does not include small, private employers, and I was just wondering how that would affect your particular community group. Do you have a lot of small businesses that are run by members of your community and employ members of your community, or do you feel that omission would be a disadvantage?

**Mr Ahsan:** As I have stated earlier, we have basically two kinds of people in our community. I'm just talking strictly of the Bengali community here. The one kind is professional people, and the other kind is absolutely general levels, or general non-skilled workers. In the business areas, we don't have that much concentration, even though very few are now stepping into businesses.

The difficulty they face from what I have encountered from them is that first of all they do not get the same kind of facilities in terms of getting a startup loan or in terms of getting startup information. If they could establish that they had a significant background already in Canada, then they are given a better advantage. I have seen them complain about these areas. That is also definitely something that the government may look at when implementing the bill.

With respect to employment equity, there is always this tendency that people from one community try to help each other when they can, but the resources that our community has are so limited that we have to really rely and lean on the government more.

**The Chair:** Thank you both for coming today and participating in these hearings.

**Mr Alam:** Thank you very much for giving us the opportunity to give our input.



**The Chair:** This committee is adjourned until 1:30 this afternoon.

*The committee recessed from 1201 to 1334.*

HUMAN RESOURCES PROFESSIONALS  
ASSOCIATION OF ONTARIO

**The Chair:** I call this meeting to order. I want to welcome both of you to these committee hearings. You probably know that by way of proceeding you have a half-hour and that you can take as long as you want, but hopefully you'll leave enough time for questions and answers at the end.

**Ms Mary Beth Currie:** All right, thank you. My name is Mary Beth Currie and I'm a lawyer with McCarthy Tétrault. The association I represent is the Human Resources Professionals Association of Ontario. I am a member of that association and the chair of its government affairs committee. With me is Linda Parks Sahadat, who is the acting interim executive director. Together, we hope we will cover some highlights of our written submissions and leave time for questions.

I have provided you with 25 copies of our written submission, so I have no intention of reading this because (a) it's a long submission and (b) I hope just to hit the highlights.

First, if I can tell you just a little bit about the Human Resources Professionals Association of Ontario so that you know the perspective from which we come, we represent more than 8,000 human resources practitioners at the workplaces. So we say that we are not an employer group or an employee group, but rather we are here as human resources professionals.

When you turn to the submission, you will see that a number of people contributed to the submission. You have a couple of lawyers; Pamela Yudcovitch, who is the government affairs coordinator person from the Human Resources Professionals Association of Peel; as well as some human resources people including from the Toronto Board of Education; and a couple of consultants, a diverse background of people who helped to put this document together.

While we're pleased to provide these submissions, if I can just say one thing, we received notice exactly a week ago today that we would be here at 1:30. While we have put together, I think, thorough submissions, they're not finished yet.

Now, we have two points to add. Because we are human resources professionals, it's our job to implement employment legislation that the Legislature passes. It is an issue that is of vital interest to our membership. We have a magazine that goes out monthly. It's a very glossy magazine. The editor's sitting right here behind me, so I have to say that, and it's true. But, in any event, we submitted to our members in the most recent volume a questionnaire asking them for their input. This is today's response. As you can see, it's about an inch

of questionnaires. Sitting in my "in" basket back at the office, I've got three days of responses, so multiply this by three. We expect to have a number of more responses. The magazine was just received in everybody's office last week.

You will find a copy of a blank questionnaire at the back of the submissions. You'll know the kind of information that we're asking. We want to compile this for you and give it to you when we've got sufficient information. I hope this will be of great interest to you, because when you look at some of the questions, one, for example, that has struck me greatly is, "What do you think your turnover will be in the next five years?" As I flip through it quite quickly—and this is not a scientific response—the majority of respondents are saying a 1% to 2% turnover. That is key. You need to know that to determine how effective this implementation is going to be if we're having seniority apply to recall and layoff but not necessarily to promotion, training etc. Information like that should be of great assistance.

When we have enough to probably form six inches of paper, somebody is going to compile this and we will respond to you. As well, when you go through the submissions, you will see that I have said "enforcement." We have submissions on the enforcement provisions as well, but given the one-week time limit, I didn't get to that.

Now we'll go back to the substance of our presentation, if I can.

Let's just put this on the record: What time did we start, so I know what my time is.

**The Chair:** At 1:35.

**Ms Currie:** Thank you. I hope to touch very briefly on what the issues of great importance to the HRP AO are, given that the framework from which we're coming is that we are the people who are required to implement this legislation. The thrust of our submissions to you will be, I hope, what provisions are required to streamline this to make it more a piece of legislation that will be more effectively implemented?

In my submission we'll set out the position of the HRP AO with respect to employment equity. I will deal with some implementation or administration issues. We'll turn to the preamble. I'd like to look very briefly at the joint responsibility concept that exists and then turn, lastly, to the protections that we believe may be required in order to protect employers who are acting in compliance with the Employment Equity Act but who may be in contravention of the Human Rights Code, collective agreements or possibly even wrongful dismissal actions and who therefore may be subject to further litigation.

Sounds like a lot in seven minutes. I can talk quickly; otherwise I'll just say, "Read page, page, page."

In any event, let me first start by saying what the position of the HRP AO is with respect to employment equity. In a nutshell, we support the concept of employment equity as an appropriate remedy for systemic discrimination with respect to recruitment, retention and promotion at the workplace, provided that individuals are qualified.

1340

As I've already said, hopefully the points that I make now are simply those that will assist in streamlining, and the first point that I want to deal with is the administration or implementation of this legislation.

I am a lawyer. I practise labour and employment law and I read legislation and regulations all the time. I found this legislation very confusing, as you had to hop between the bill and the regulation. You go through your provisions and many of them, for example, will say the "certificate as prescribed" and then you have to go to the regulation, because "as prescribed" means prescribed by regulation.

A lot of the sections force the employer or the person implementing the bill to look at two documents. But it's not just the employer in that case. I mean, it's also the people who benefit by this legislation. Everybody who is going to be subject to the terms of this will not know what those requirements are, what their rights are, if they have a copy of the bill in their hand. It seems to me that the Legislature can work perhaps to incorporate some of the points already in the regulations into the bill and to make it a more comprehensive document.

Let me give you a couple of examples. I said you've got to leapfrog back and forth. For example, one conflict is with your coordinating committee. In the act it says one employer representative and bargaining representatives. Jill Harcourt-Vernon, who is a representative from the Toronto Board of Education on our committee, notes how that workplace has 23 unions. In accordance with the legislation, there would be one employer and 23 bargaining unit representatives. But then you go to the regulations and the regulations say that the numbers of employer representatives shall not exceed the numbers of bargaining agent representatives. Well, which governs? It's confusing. As a lawyer, I would tell you the act would govern. I think you've got some conflict there that you should deal with. Again, it comes down to perhaps expanding the bill so that the obligations are all set out in that bill.

The other point is the definitions. I had some problems moving back and forth. As you go through the submission, hopefully you will see exactly what I talk about with respect to the definition sections.

I am mindful of my time—and I could talk about this for a long time and I know I will run out of time—but the one point is the definition of "employer." There is a definition of "employer" contained in this bill, which I think is a great improvement over the pay equity

legislation, for when it was first passed there was no definition and look at the huge litigation that has gone on at the Pay Equity Hearings Tribunal and is still ongoing. Right now, in 1993, there's a case before the tribunal involving the definition of a "private sector employer," five years after the effective date.

I think it's very wise to incorporate a definition of "employer" here, but tell me, what is the common law concept? I would suggest that in proceeding with this, be precise in your definitions and put those definitions. Don't be afraid to tell me what a common law concept is. I may differ.

I know that the first day the deputy minister went through and said to you it's the Montreal Locomotive test, the fourfold test. That test has been superseded in some case law, so there are different definitions out there. What is the common law test?

I've set out the labour relations test. It's very specific about who controls the workplace. I think that's important. It's who controls the employees, because that's what employment equity is all about. It's eliminating systemic barriers. It's eliminating the employers' own barriers which may be there as a result of their practices. It's got to be the direct control. It can't be an employer two or three levels away. It can't be the health and safety employer, you know, the employer who contracts with a contractor and suddenly that employer is responsible for the workers of the contractor. The person contracting doesn't have the direct control.

The preamble is our second point, and as you go through our document you will see that I believe that anybody reading the preamble, where you talk about how intentional and systemic discrimination is the reason for the balance, implies that those persons whom I represent or whom we represent, the human resources professionals of Ontario, have been the people discriminating intentionally. I mean, you've said "intentional discrimination," and the 8,000 members of this association that we represent, I had in my first draft, "take great exception." In this draft you will see that we say, "We are dismayed that the inference would be that you would assume that our members would intentionally discriminate against the four designated groups," and yet that's what you're saying.

I would urge you, and you'll see in our submission that we've recommended—I did not provide any language modifications. I've simply said that you can start the preamble with paragraph 3, where you talk about the reference to the Human Rights Code and so on. But it is an issue with the HRP AO that you would suggest there was intentional and deliberate discrimination here designed to deliberately keep the members of the designated groups from that workforce. We do not.

With respect to the collection of workplace data, let me just say, without going further, because I believe it's covered in the submissions, that in order to be effective



and accurate and to present a complete picture, I believe there should be some mechanism by which the employer can do a cross-reference to confirm the self-identification. We understand the need to have the privacy, because I think privacy issues are very important. There is no doubt that is an issue that has to be addressed in developing whatever mechanism is ultimately developed. I'm sure you will have heard examples from others, and if you haven't, you're going to hear one from me. I just finished a 15-day human rights hearing and the person from whom I took my instructions was a double amputee. So he had replacement legs or he was in a wheelchair, either/or. He is a wonderful person and he does not consider himself in the least bit disadvantaged or disabled. And so in the self-identification process, would he put down—I can't tell you what he would or would not. We discussed this at great length.

His employer, on the other hand, in seeing him in a wheelchair, is obviously required to have the necessary accommodation. Everybody is, with the ramps and so on. But they would want, presumably, in their employment equity plan, if we're looking at the targets and goals, to take into account this individual. If there's no self-identification, then he doesn't exist as far as they're concerned. So there has to be a balance, I think, because you don't want, with the self-identification, everybody saying no. I mean, what happens when my employer says to me—I guess I'm an employer, but in my self-identification, if I choose not to check off that I am female, what do they do? I know that sounds ludicrous, but what do you do? So I do think there has to be some kind of mechanism which provides for or which permits the employer to deal with persons whom they perceive to be a member of one of the designated groups.

Let me then turn, I guess—and this is sort of the lawyer part talking—to the protections against multiple litigation as a result of compliance with employment equity. I see this with a number of pieces of legislation where you've got an employer who may terminate and suddenly we're before the labour board as a result of alleged reprisal action under the Occupational Health and Safety Act. We've got a human rights complaint, we've got a wrongful dismissal action going forward, so from one cause of action, we suddenly have a huge number of litigation actions going on.

I think it's important that if employers act in compliance with employment equity, there be some protections from individuals who feel aggrieved because of the conduct litigating against them; in particular, it's the reverse discrimination provisions, that if as a result of the employment equity plan—an employer will not want to be the Bakke, or the Bakke decision in Ontario. And I think there should be some strengthening of the provisions which already exist in the legislation. Let me just say that it's going to be, if you get, like—I'm sorry. I've lost track and I can see three puzzled looks here, so

can I just start this part again? Thank you.

Let me just say, given the overriding jurisdiction of the different statutory schemes, compliance with employment equity may result in the contravention of other legislative obligations or other contractual obligations, and, in particular, here's where I am referring to the breach of a collective agreement or potentially the breach of the Human Rights Code.

1350

Our position is that where the employer acts in compliance with employment equity, there must be a protection in the legislation, in the Employment Equity Act, to prevent litigation against the employer based on compliance with employment equity. Otherwise it's going to be very costly for the employer, for sure. We can all go off and defend the actions, and hopefully the statute will provide a sufficient defence, but right now you've got no statutory defence written into the legislation. There should be.

As well, you've got the Human Rights Code, which has the provision that says it shall prevail over all other legislation. That's problematic because I don't believe the protections that exist right now, in the language in which it has been presently drafted, are sufficient to basically overcome that obligation or that entitlement for an individual to go to the Human Rights Commission and to have the Human Rights Code override employment equity.

We have made in our submission, I guess, two recommendations to deal with this issue. One—and this comes into your seniority issue about which takes priority, employment equity or seniority—we suggest that until the expiry of the existing collective agreements which contain seniority provisions, seniority clauses should take priority. Following expiry of the collective agreement—that gives the parties the opportunity to negotiate—the Employment Equity Act should take priority. In that way, litigation cannot be commenced, or, if it is, at least the employer will have a defence.

The other thing is, as I said, to simply strengthen the provisions in the act to provide that where an employment equity plan, on its face, discriminates against persons, that such plan will be deemed not to contravene the Human Rights Code.

It's five minutes to. That leaves me with, I believe, 10 minutes for questions.

**The Chair:** That's right.

**Ms Currie:** Thank you. So I will take questions. I can talk a lot more if you'd like, but I'm pleased to take questions.

**Ms Harrington:** Can I take a quick one?

**The Chair:** Actually, it's the third party that begins this, Ms Harrington. There are three and a half minutes approximately for each caucus.

**Mrs Witmer:** Thank you. I appreciate your presentation and the very specific recommendations.

You mentioned here, and you didn't speak to it, seniority and joint responsibility. Could you expand on that as to what your concerns might be and what changes you would like to see?

**Ms Currie:** With respect to the joint responsibility, our concern is that the definition of "employer" contained in the regulation says that where there is a joint responsibility, the term "employer" shall be deemed to mean bargaining agent and employer. In some cases—for example, with the board of education, there are the 23 unions—there are often jurisdictional disputes between the unions themselves. There is, in some cases, not a willingness to cooperate between the different bargaining agents, and yet the legislation and the regulations contemplate that it is the employer alone who will bear the responsibility or who will bear the penalty. When we talk about joint responsibility, it's our submission that there should be an equivalent penalty provision on the bargaining agents and an equivalent obligation to negotiate in good faith and so on.

With respect to the seniority—

**Mrs Witmer:** Page 10.

**Ms Currie:** Page 10, okay. This is what I just very briefly touched on in the last point, and that is that again there should be—we are bound by collective agreements, those parties that have negotiated them. The collective agreement will have been negotiated by both sides in good faith; that's the terms and conditions of employment. To come in now with an act that says, "Totally ignore it," does not permit the parties to negotiate between themselves as to how they want to deal with this. Although the legislation does provide that there can be negotiations, if suddenly the employer is told seniority, for example, for promotion doesn't apply any more, how do you negotiate? I mean, you're over a barrel. So we are either in breach of our collective agreement obligations or we're in breach of the legislation. I don't think that's the intent here, or it shouldn't be.

What we're talking about is what I'd almost call the sunset provision. Let the collective agreements be binding until the expiry date, then let the parties go forward knowing what the law is. But you're changing the law on them in the middle of the agreement. That's the one thing. Thereafter, I think that clearly employment equity has to take priority over the collective agreement.

**Mrs Witmer:** Thank you very much.

**The Vice-Chair (Ms Margaret Harrington):** Mr Tilson, you have one minute.

**Mr Tilson:** I have a question as to the Human Rights Commission and the Employment Equity Commission. The Employment Equity Commission, it has

been estimated in the estimates, is going to cost the taxpayer of Ontario approximately \$6 million. I've asked this question of several people. As a legal person, I'd like to hear your thoughts on it as to why we would need the Employment Equity Commission, another level of bureaucracy, as opposed to perhaps increasing the powers of or expanding the Human Rights Commission.

I'm told the Human Rights Commission is a year and a half—it's becoming bogged down in a myriad of—

**Ms Currie:** I received a complaint where we had to respond and then we were told that in three years' time there would be an investigation. Three years' time.

**Mr Tilson:** I understand that problem, but yet at the same time we're creating yet another bureaucracy—

**Ms Currie:** I agree.

**Mr Tilson:** —another system which is costing a substantial amount of money. My question to you is, in light of that cost—

**The Vice-Chair:** Unfortunately, I have to cut you off. Sorry. We must go on to government, and the first person is Mr Frankford.

**Mr Robert Frankford (Scarborough East):** I think I heard you say that in the survey, the turnover is 1% to 2% over five years.

**Ms Currie:** Oh, well, I indicated—

**Mr Frankford:** I know it's not scientific—

**Ms Currie:** Oh, no, well—I'm sorry. As I look at it, it is 3% to 4%. That is, as I flip through, when you look down at the last page, it says, "What is your organization's normal annual turnover?" and it's 3% to 4%. Some people have said what they expect in five years, but I guess to be absolutely accurate, "What is your organization's normal annual turnover?" is 3% or 4%.

**Mr Frankford:** Okay. I've no idea what one expects, but that seems fairly low in looking—

**Ms Currie:** Exactly, and that's why you need to know that when you're developing what should be going forward with the employment equity plan, and will this be an effective means of changing the diversity in the workforce.

**Mr Frankford:** Would you say that perhaps you've got a skewed sample of some type of workplaces as opposed to others?

**Ms Currie:** No. Although they're all anonymous—this is amazing. When you fax stuff in, it always tells you who your employers are. This is why I will not be supplying you with copies. But what I have found is we have had responses from employers with two to 2,400, 3,000. It is a myriad.

I mean, when you represent 8,000 HRPAA, it's a big association. Joanne Eidinger, the editor, says that normally when we do these membership surveys, we end up with a response of, you know, a couple of percentage. We're now, she expects, at 10%, which is



a high return rate. I haven't counted, but that's a lot of pieces of paper, each one page.

But I'm just going to come back to this. I know you've cut me off, but I'm going to come back in one minute, if I may, simply to say with respect to the levels of bureaucracy—

**The Vice-Chair:** You're getting a little leeway here. Did you answer Mr Frankford's question?

**Ms Currie:** I hope so.

**Mr Frankford:** Yes.

**The Vice-Chair:** Okay, next is Mr Winninger.

**Mr Winninger:** Just a quick comment and a question for you, the comment in regard to the Bakke decision. I submit to you that we may have more statutory protections already in our Constitution, in our Human Rights Code, than the defendants in Bakke would have had. We've got 15(2) in the charter, 11(2) in the Human Rights Code—

**Ms Currie:** Exactly, but employment equity overrides that.

**Mr Winninger:** Right. But I guess what I'm suggesting to you is that there's a little more than there was in the 14th amendment, in the 5th amendment and so on in the US, to afford protection to the employer that complies with the employment equity.

**Ms Currie:** The charter won't apply. I mean, it depends on how the case is framed.

**Mr Winninger:** Maybe we can discuss it later. It's just a difference of opinion.

**Ms Currie:** But I don't want to be the person defending.

**Mr Winninger:** The question, though, which I think is an important one, and it comes back to your point about self-identification: Given the person's right to privacy and given the mechanism of self-identification under the employment equity legislation, do you have any constructive suggestions as to how we can ensure that an employee's privacy is protected and not infringed and still allow an employer to verify self-identification data?

**Ms Currie:** For the record, let it show I'm smiling. I don't mean to be flip about this because obviously this is a very critical issue. We came up with no hard-core recommendations. You'll see that we've suggested that perhaps employers could refer to the census documents and so on. We have at this time, after one week of serious deliberations, no recommendation to make that's a practical one.

**Mr Winninger:** But there may be one forthcoming in the fullness of time?

**Ms Currie:** Yes, possibly.

**The Vice-Chair:** We have one more minute.

**Mr Fletcher:** What's interesting to me is the idea of

seniority when it's in the collective agreement, to let the collective agreements run out. Would that, then, after the collective agreements expire, be negotiation in the normal sense of collective bargaining negotiation or would it be negotiation under the Employment Equity Act? I'm wondering what scenario you see.

1400

**Ms Currie:** I see it under the collective agreement because unions have an obligation also to assist in the implementation of employment equity. So I see that the collective bargaining procedure would be where you would do the negotiations. Right now, all the collective agreements say, "Promotion etc based on"—

**Mr Fletcher:** Seniority.

**Ms Currie:** Exactly. If you suddenly take that provision out—so we say, "Let the collective agreement take primacy until it expires," and that's going to expire anywhere from tomorrow to—

**Mr Fletcher:** Six months to—

**Ms Currie:** Yes, exactly, so it will be different depending on the different workplaces.

**Mr Fletcher:** Do you think it will be difficult to negotiate this? No? Me neither.

**The Vice-Chair:** I'm sorry, Mr Fletcher, that's one minute. We'll go to the opposition party.

**Mrs Elinor Caplan (Oriole):** Thank you for a very interesting presentation. I have two questions: The first, I'd like you to, if you could, expand for a moment on some of the reverse-onus provisions in this legislation that you have some concerns about.

**Ms Currie:** The reverse-onus provisions being, because I know in reading the statements from the first day, the preamble in particular? You've heard our submission on the preamble, that we take great umbrage at the fact that it slights or appears to infer that we are guilty of intentional discrimination.

Moving into the enforcement provisions, which we've not provided for in the submission, the powers of the commission and of the tribunal to issue orders and to have them enforced as if orders of the court, with no hearing and very little investigation, terrify me. Notwithstanding that, the deputy minister indicated that they're standard provisions. I agree that health and safety officers have similar provisions and so on, as does the Pay Equity Commission. The breadth of the tribunal is very broad, and to get there is a problem. For employers who are faced with these allegations, it's going to be an expensive process of trying to prove that in fact they have complied, that they do have the written employment equity.

I'm rambling here to some extent, but I think that given some of the provisions which are not as precise as they might be, and given the extensive powers of the officers under the commission, or the intended powers of the officers under the commission to be able to go in

and write any order, the cost to the employer will be substantial.

**Mrs Caplan:** You also have some concerns about the clarity of the language within the legislation.

**Ms Currie:** Yes.

**Mrs Caplan:** I would like you as well to comment on the layers of bureaucracy or the need to establish another bureaucracy as opposed to perhaps, as you heard, expansion of and more effective use of the Human Rights Commission and/or coordination with all of the equity bodies, including the pay equity tribunal and so forth, from your experience, just what your feelings are.

**Ms Currie:** You may all have read the Cornish report, where Mary Cornish recommends a tribunal to deal with equity issues. I think it's an idea which would receive support of the employer community, certainly of the HRPAO because it needs that. Where there are a number of potential litigation issues, one tribunal that's knowledgeable and expert in equity issues and skilled in the different legislation could interpret those.

So I support one equity tribunal, but what I also support is extensive training of officers. You will also note from the Cornish report that additional training could be of great benefit to human rights officers. Any kinds of officers appointed should receive adequate training. That's tough, I know, with government funding and we all appreciate that, but I think that if you have a well-trained body able to investigate properly and knowledgeably about the procedures of investigation, it would be a useful thing to suggest one equity body.

**The Vice-Chair:** Thank you for your presentation, Ms Currie. We all enjoyed it and we learned from it.

**Ms Currie:** Good. Thank you very much. I hope you enjoy reading the submission as well, because it contains a number of other points, all of which are valid and we hope helpful.

FEDERATION OF WOMEN TEACHERS'  
ASSOCIATIONS OF ONTARIO

**The Vice-Chair:** I now call upon the Federation of Women Teachers' Associations of Ontario, if they could please come forward. Welcome to the committee. You have 30 minutes in total for your presentation. In that, you will get time to speak to us, and then I hope you will allow some time for each of the three parties to ask you questions. So if you'd like to begin and introduce yourself and the people with you.

**Ms Margaret Dempsey:** Thank you very much. I'm Margaret Dempsey, president of the Federation of Women Teachers' Associations of Ontario. With me today are two members of our employment equity staff, Ada Hill on my right and Teresa González on my left. Beverley Saskoley, also a member of our executive staff, was not able to be with us this afternoon. Certainly, we will make some comments and we do want to

answer your questions. We are very pleased to be able to make a presentation to this committee on behalf of the 41,000 women teachers who work in the public elementary schools of this province, who are members of the Federation of Women Teachers' Associations of Ontario.

It is important for you to hear from us because there are those who have made submissions here who are attempting to undermine the purpose of and to distort the need for employment equity legislation. We are here to endorse the legislation, to support the general approach of the regulation and to discuss with you some recommendations for improvements.

You have recently heard from those who represent groups who are concerned about the effect of the law on those who have not been identified as the designated or disadvantaged groups. We understand their concerns, but we also urge this committee to focus on the women, racial minorities, disabled persons and aboriginal persons who have lived with decades and generations of disadvantage and who are counting on this legislation to open the doors that have been closed to them for so long.

We have heard threats of a backlash to this legislation. There would be no backlash if all employers would adopt the progressive attitude and public position recently taken by IBM and other employers who are ready and willing to take the appropriate action to be inclusive in their employment practices. Indeed, they indicate that employment equity provides them with advantageous outcomes.

FWTAO has been educating, persuading, lobbying and prodding the Ministry of Education and school boards across this province for decades to increase the number of women in leadership. Even though we as women hold over 70% of the educational positions, we hold only 46% of vice-principalships and 27% of principalships. This is true despite the fact that the Ministry of Education has a memorandum requiring school boards to target for 50% women in leadership by the year 2000. That target includes an expectation that women will hold 50% of supervisory officer positions, and that percentage is only 17% now.

We have experience with trying to get employers to address employment equity through the persuasive route. We know and have repeatedly told hearings and commissions discussing employment equity that legislation is essential and that strong, enforceable regulations are required.

We urge you to listen to reasonable requests for improvements to this legislation and to get on with passing the law which will help so many to obtain equal treatment in employment.

I would now like to ask the executive staff with me to outline our 10 recommendations.



**Ms Teresa González:** To begin with our recommendations, the first one is that Bill 79 and the regulation be passed immediately; the requirements of Bill 79 and the regulation be extended to include Bill 21; a tracking system, including short-term goals and timetables, be in place in order to monitor the major demographic shifts in the workplace and not be limited to a workforce survey every nine years; specific action plans need to be in place in order to review employment equity and remove the barriers that are part of the employment practices and the timetables for their amendment should be part of the required elements; standards for goals and timetables must be included in the act and they must be accompanied by accountability measures and linked to the performance appraisal of all managers.

1410

**Ms Ada Hill:** You have the copy of our submission, and our sixth recommendation is connected to information that appears on page 5 of the report itself. We are suggesting that there is confusion between the act and the regulation about what constitutes "positive and supportive measures." What is a positive and supportive measure, how is it defined and what kinds of things are being talked about need to be much clearer and be consistent across the act and the regulation.

We would also like, in recommendation number 7, to draw to your attention the rights of individuals. The structure as outlined in Bill 79 at the moment does not give an individual a right to make a complaint regarding what is happening related to the employment equity plan, its development and decisions that are made around the way the employment equity plan is going to be administered.

The information about the eighth recommendation is connected to material that appears on page 10 in the body of the report. We are suggesting that all employers should be covered in some way by this legislation. Those people who work in the smallest workplaces tend to be those who are the most disadvantaged and those who could benefit the most by having some rights guaranteed through something like employment equity legislation. They may not need to be involved in a sophisticated, lengthy process to gather data, and if you're a very small workplace, you have far less data to gather and to report on in the first place, but some protection for people who work in very small workplaces we feel is important.

Recommendation number 9, the information related to that appears on page 11 in the report. We're suggesting you consider that the power of the commission be expanded to include the right for the commission to establish periodic audits of workplaces. At the moment, it is permissive to say that the Employment Equity Commission may examine a workplace. Very often, that probably would only happen if they were invited to or if a complaint was in the process of being handled. We

are suggesting that, routinely, the commission establish a certain percentage of employers it will audit who will be reported on in a compendium way so that every employer at some point can expect that the commission will show up and audit, whether he expects it or not.

The information about our last recommendation appears on page 10. We would like to emphasize, from our experience in the area of employment equity within the school systems, that education and training are crucial and the most important factors related to changing the climate in the workplace. Attitudinal change takes a very long time. Employment equity could result in behavioural change, and that behavioural change won't occur until the employers make it very clear to all employees what the expectations are related to the implementation of employment equity.

The commission itself needs to spend a good amount of its time ensuring that the general public of this province, the naysayers we are hearing from in a very predictable way and those who are prepared to say there is something underhanded or inappropriate about guaranteeing equality to those who have been shut out for so long—the Employment Equity Commission should be making sure that this topic is on the agenda in front of the public, and that this government is speaking in a positive way about equal rights all the time. So our last recommendation is that every employer must include its educational components as a part of their plan and that those educational components be developed in a way where goals and timetables are established for implementation and they are assessed and monitored in the same way as the numerical targets are done.

Those are our general recommendations.

**Ms Dempsey:** The Federation of Women Teachers' Associations of Ontario believes that employment equity is a human right, a comprehensive management and leadership philosophy and a fundamental shift in the policies and practices of organizations.

Employment equity must be institutionalized and integrated into the culture of every organization. Creating a vision for employment equity must begin with the Employment Equity Commission. Bill 79 and the regulations must be clear with strategic plans and accountable outcomes strongly enforced.

Employment equity will reflect the diversity of our society in the workplace, not the preferences and nature of the dominant groups. Let us learn from experience that employment equity will not be implemented voluntarily. The answer is strong legislation and regulation and we urge the government to get on with it now.

**The Vice-Chair:** Each party has about four minutes. We'll begin with the government party and Mr Fletcher.

**Mr Fletcher:** Thank you for your presentation. I'm just going to go back to the days when I was a trustee

and I was on some of the hiring committees that went on. I remember one applicant who was coming in and the first thing that was said before she came through the door was, "This person is a member of FW and is working hard for the union." That was it and she didn't get the job. Whether it's discrimination or not—

**Ms Dempsey:** Double.

**Ms Hill:** Double discrimination.

**Mr Fletcher:** I can tell you who the person was and you would know who it was, but that was the sort of thing that was going on. I was also a member of the race relations committee with the school board and we did forward some policies, but not much has come out of those policies within the school board as far as the promotion of females into higher positions of authority, especially principalships and especially in the secondary system, as your brief outlines.

I've heard a lot from the opposition members about—what we need is, we can't destroy the merit system. How has the merit system helped in your organization as far as being hired on merit?

**Ms Hill:** Do you want to say something about that?

**Ms González:** I always find it interesting that reverse discrimination became the topic of conversation when women and people from the designated group started applying for positions of responsibility. It's interesting that people equate employment equity with hiring those who are not qualified. Everyone who comes to this country is as well qualified as everyone who is sitting here, but the barriers that we encounter when we come here are very, very difficult. Diversity is a fact of life in the workplace, but employment equity is not.

I will say to you that as a principal of continuing education, I work with a lot of adults who came in with accreditation, with English skills—with all the abilities you can imagine—who had to clean homes, take care of apartments because the first barrier they encountered was, "You do not have Canadian experience," and their lifelong learning was never recognized.

So I urge you to look at it in terms of what is equitable and what is a human right and who decides what merit is in this country and whose norms are we establishing the workplaces by.

**Ms Dempsey:** May I add to that, as a teacher who has sought promotion to a position of added responsibility in my home school board. As you know, prior to 1980, the principals' courses were not opened as such in terms of making application to take the course, but through what I call the tap-on-the-shoulder from one's employer. I tried and I was unsuccessful at receiving that tap, but once the courses were opened, largely due to the pressure of my federation, I was able to take those principals' courses and I'm a principal now in my school system.

**Ms Carter:** I welcome your support for Bill 79 in

the principles of employment equity and I share your concern about the inadequate principalships. I think, in my own area, we're just beginning to move on that, but there's a long way to go.

**1420**

I wanted to ask you about small workplaces. You are suggesting that there should be modified provisions for small workplaces, and certainly it is important to protect all workers, regardless of where they work, but it seems to me there are some inherent problems with small workplaces because you don't have staff resources, human resources personnel. You don't have any scope to set the precise numerical goals and timetables that you are advocating because the numbers are just too small and the range of change that may be happening is just too small.

I would be interested in hearing what you have to say about that. Also, quite a few small workplaces are in fact businesses that are run maybe by women or people who are themselves of ethnic origin so that, in those cases, it might not be particularly urgent.

**Ms Hill:** We have a number of school boards across the province which are very small. They have a handful of employees. That's not to say they didn't go through a process similar to some of the larger boards to say: "How many people do we have? How many openings are we likely to have over the next  $x$  number of years and how much change can we reasonably make in order to balance the male-female ratio throughout the employment system from caretakers to the director of education?"

As I said in my original remarks, because it's a very small workplace, the analysis of the workforce doesn't need to be very sophisticated. You don't need a special computer software program to count up the bodies in a really small workplace. It should be relatively easy to sit down as an employer and say: "This is the way our workforce looks now. This is the way our community looks. How can we work towards changing when we have opportunities to change so that our employment group looks more like what our community looks like?"

**The Vice-Chair:** Could you finish. Did you finish your statement?

**Ms Hill:** Yes.

**The Vice-Chair:** I'd like to move on to the opposition party. Ms Caplan, do you have a question?

**Mrs Caplan:** No. In fact, I want to just thank you for a very well-thought-out and articulate brief. I'm very aware of the slow progress that has been made in the field of education. I'm not sure this bill will solve that problem. That's one of the concerns I have, but I know that education has been one of the places that we've seen a lot of attention paid to employment equity programs. Many boards in fact are making progress and others we know are not. I think we can learn a lot from



what's happened in the field of education and hopefully see some improvements.

**Ms González:** Let me just add that hopefully Bill 21, if it is expanded, and memorandum 111 looked at and revised and strengthened, it will take care and include all the requirements of Bill 79.

**Mrs Caplan:** Just for the record, perhaps you might just give a long title to the two bills that you mentioned, Bill 21 and the other regulation.

**Ms González:** Bill 21 allows the Minister of Education and Training to do two things: to request that boards have anti-racist policies and to implement employment equity and name the designated groups. The anti-racist policy has been written and will be in place in September, but the second area, they're waiting for Bill 79 to be implemented.

**Mrs Caplan:** But Bill 21 has been around for quite some time.

**Ms González:** That's right.

**Mrs Caplan:** When was that? Do you remember the date? Was it three, four years ago?

**Ms González:** I think it was about a year and a half ago.

**The Vice-Chair:** Now the third party.

**Mrs Witmer:** Thank you very much for your presentation. I would find it difficult to disagree with much of what you said. I was chairperson of a board when the attempt at employment equity was first made. We actually received recognition for our attempts. But I really do sense recently—and I've been personally somewhat disappointed, I don't see the same commitment. I wonder what's happened. I was very optimistic originally that some real changes would take place, but I have to tell you, I don't see that any more. I know there are some boards that are very, very committed, but I sense at other times something's happened and I'm not sure what it is.

**Ms Hill:** One of the things we are hearing from our representatives in school boards is that school boards are sitting back waiting for Bill 79. They're saying: "There's going to be a law. We better wait around and see what the law tells us we have to do."

One of our mentors and friends over many years is Rosemary Brown, who was a speaker at our annual meeting last year. What she told us was that rights won are not rights guaranteed, that you must always be vigilant. If we don't have representatives there, women there, every single time there is a selection for a position or several positions watching over the process, then they slip back into the old habit of selecting the people they feel more comfortable with.

**Mrs Witmer:** I can personally attest to that.

**Ms González:** Let me just add too that I think it's very important we realize that, as young women, we

were brought up in a society with a lot of stereotypes about where we fit in as women. But we were also brought up in a very racist society. I think a lot of white women in particular also need to look at where it is they fit in terms of the society we've been brought up in. One of the things our federation is working at is looking at the jeopardies we're faced with in terms of how we ensure that women of colour, aboriginal women and women with disabilities are promoted to positions of responsibility.

**Mrs Witmer:** Okay, thank you very much. I wish you well. I know you've made an outstanding contribution to the promotion of women in all areas of life. Thank you.

**The Vice-Chair:** Is there any further question? Thank you very much, Ms Dempsey, Ms Hill and Ms González.

**Ms Dempsey:** If I may, we have one other piece of information. I would ask Ada to explain what it is, please.

**The Vice-Chair:** Okay, that's fine.

**Ms Hill:** I'd like to leave with the clerk a copy of the report about affirmative action that is presented to our annual meeting. We weren't able to send it to you in advance because it needed to go to our own members first. So I'll leave these copies with Lisa so they could be distributed to you.

**Ms Dempsey:** Our annual meeting is in progress while we're here.

**The Vice-Chair:** I hope you enjoyed Ms Rosemary Brown as well.

I'd like to call forward now the Association canadienne-française de l'Ontario. If you could come forward. They're not here? We're looking for Jacques Michaud. Seeing that the following organization is not present at this time, we will have a short recess of five minutes and reconvene. Thank you.

*The committee recessed from 1428 to 1434.*

ASSOCIATION CANADIENNE-FRANÇAISE  
DE L'ONTARIO

**The Vice-Chair:** I'd like to call this committee back to order, please. The presenters before us are the Association canadienne-française de l'Ontario. Mr Michaud, would you introduce your colleague and proceed. Altogether you have half an hour, and we would also like to have time during that for questions.

**M. Jacques Michaud :** My colleague here from l'Association canadienne-française de l'Ontario is Ali Maachar, who is on the board of directors of this association, and he will be presenting with me. I will be reading most of the presentation in French, and I'm sorry that we were not able to get you a copy of this report so that you could translate it. Hopefully, it will work out all right.

Au nom de la communauté franco-ontarienne et en mon nom personnel, je tiens à vous remercier d'avoir invité l'Association canadienne-française de l'Ontario à vous faire part des impératifs qui s'imposent sur la mise en oeuvre de la Loi sur l'équité en matière d'emploi.

L'Association canadienne-française de l'Ontario a été fondée en 1910 pour assurer les services de langue française à nos citoyens franco-ontariens et franco-ontariennes de la province de l'Ontario. Elle regroupe aujourd'hui 22 conseils régionaux et 24 associations affiliées qui oeuvrent dans tous les secteurs d'activités de l'Ontario français.

Alors, si vous avez une copie de cette présentation, je vais vous dire que, pour me limiter, j'ai dû laisser de côté quelques commentaires, quelques extraits. Alors, j'espère que vous saurez bien me suivre à ce sujet-là.

L'expression «communauté franco-ontarienne» est utilisée pour faire référence non seulement à l'héritage culturel canadien-français de la communauté, mais aussi au patrimoine ethnoculturel francophone auquel contribuent des Franco-Ontariens et des Franco-Ontariennes de races et de cultures diverses, souvent nés ailleurs.

Le développement et l'épanouissement de la francophonie ontarienne au tournant du XXI<sup>e</sup> siècle constituent un défi de taille. L'équité en matière d'emploi a pour but de corriger une situation, celle dans laquelle se trouvent des personnes membres de groupes victimes de discrimination, d'éliminer et de prévenir du même coup la répétition de ces situations dans divers secteurs d'activités.

Dans le projet de loi sur l'équité en matière d'emploi, nous constatons que la communauté franco-ontarienne fut exclue comme groupe d'équité. C'est inacceptable.

La Charte canadienne des droits et libertés témoigne à l'égalité en matière d'emploi, ainsi que les sections 4, 6(2) et 10 du Code des droits de la personne de l'Ontario (1981). On trouve pourtant que, dans tous les secteurs de la société, les membres de certains groupes n'ont pas eu, historiquement, les mêmes privilèges au chapitre de l'emploi en raison de leur sexe, de leur race, de leur traits ethniques ou d'un handicap.

On reconnaît que cette situation viole les droits fondamentaux de la personne et entrave la croissance économique de notre pays en ce sens, que cela empêche nos citoyens et nos citoyennes également compétents de bénéficier des mêmes avantages économiques et des possibilités d'emploi sur le marché du travail.

Nous démontrerons dans les minutes à suivre la nécessité d'inclure les francophones, les Franco-Ontariens et les Franco-Ontariennes, au chapitre de cette nouvelle Loi ontarienne d'équité en matière d'emploi à titre de groupe cible et aussi d'inclure le motif de «langue» comme motif illicite de discrimination à l'intérieur du Code des droits de la personne de l'Ontario.

Le gouvernement de l'Ontario a créé en 1987 un programme d'équité en matière d'emploi dans sa formation publique incluant les Franco-Ontariennes et les Franco-Ontariens. De là, le non-sens de ne pas faire de même pour cette nouvelle Loi.

Nous vous rappelons que l'Ontario français a été longtemps dépourvu de l'éducation et de la formation professionnelle dont il avait besoin pour développer les compétences nécessaires afin de réussir dans les secteurs privé aussi bien que public et parapublic sur le marché du travail ontarien. Comme résultat, les Franco-Ontariennes et les Franco-Ontariens se retrouvent aujourd'hui avec un taux de chômage, d'analphabétisme et de décrochage plus élevé que chez la majorité anglophone. De là, dire que l'élément rattrapage pour la communauté franco-ontarienne est un élément d'extrême importance pour nous.

Par exemple, en 1986, le taux de chômage dans la communauté franco-ontarienne s'élevait à 8,8 % alors que la population ontarienne en général était à 7 %.

Au cours de cette même année 1986, plus de 19,8 % des jeunes Franco-Ontariennes et Franco-Ontariens âgés entre 15 et 19 ans étaient sans emploi. Quant aux jeunes de 20 à 24 ans, ils affichaient un taux de chômage de 12,6 %, c'est-à-dire un taux supérieur à celui de la jeunesse en général. Le taux de chômage était de 10 % pour la population ontarienne âgée entre 15 et 24 ans.

L'étude interministérielle de votre gouvernement indique que les francophones et les non-francophones ayant atteint le même niveau de scolarité gagnent un salaire à peu près semblable. Voilà un vice de logique qui illustre de façon éloquente le manque de compréhension des fonctionnaires qui en sont arrivés à cette conclusion. Ce genre d'analyse équivaut à suggérer que, puisqu'un médecin autochtone quelconque, ou une femme médecin par ailleurs, gagne autant que la moyenne des médecins, leur groupe n'est pas victime d'iniquité ou de discrimination.

1440

Selon un rapport commandité par la Direction générale de la promotion des langues officielles du Secrétariat d'État du Canada, intitulé L'État des communautés minoritaires de langue officielle, Indicateur de développement, Ontario, la situation des francophones en Ontario démontre que ceux-ci sont défavorisés sur le marché du travail. Au recensement de 1986, le taux de participation des francophones sur le marché du travail est de 3,5 à 7,5 points inférieur aux taux de participation moyens.

En effet, en 1986, le taux de chômage de la population de langue maternelle française s'élevait à 8,8 % alors que celui de la population de langue maternelle anglaise était de 6,9 %. Ajoutons qu'en 1993, aujourd'hui, lors de cette époque de récession, on peut bien s'imaginer quels seront les taux de chômage et les taux qui portent à une «employabilité» de la francopho-



nie, qui est atroce.

Les revenus individuels des Franco-Ontariennes et des Franco-Ontariens sont inférieurs à ceux des anglophones de la province. Cet écart s'explique d'une part de la participation plus faible de la population franco-ontarienne à l'emploi. Il s'explique aussi par le nombre relativement moins élevé des Franco-Ontariens et Franco-Ontariennes à toucher un revenu supérieur à 40 000 \$.

La Loi 8 sur les services en français garantit des services et non des emplois aux Franco-Ontariennes et aux Franco-Ontariens. La Loi oblige le gouvernement ontarien à offrir ces services dans 22 régions désignées de la province. La Loi sur l'équité en matière d'emploi touchera les secteurs public, parapublic et privé, et ce sur tous les territoires de l'Ontario. Les postes désignés bilingues dans la fonction publique provinciale ne sont pas obligatoirement occupés par des Franco-Ontariennes et des Franco-Ontariens mais par des personnes qui ont la capacité de s'exprimer dans les deux langues.

À l'heure actuelle, le taux d'analphabétisme fonctionnel chez les adultes franco-ontariens frise 40 %, comparativement à un taux de 20 % pour la population en général, et ailleurs en province, on parle d'un taux de 60 % d'analphabétisme pour les Franco-Ontariennes et les Franco-Ontariens.

Bien que la situation de plusieurs membres de la communauté franco-ontarienne ne puisse être directement associée à celle des minorités visibles proprement dites, il n'en demeure pas moins que les Franco-Ontariennes et les Franco-Ontariens n'occupent pas la place qui leur revient et ne jouent pas de plein pied le rôle que devrait être le leur au sein de la société ontarienne. Des chances leur sont refusées parce qu'ils sont de culture différente et parlent une autre langue, langue qu'on reconnaît officielle au Canada. En ce sens, ils sont victimes de discrimination systématique, subtile mais tout de même dévastatrice.

Le rapport présenté par la Commissaire à l'équité d'emploi indique également que «devant certaines statistiques, nous sommes forcés de reconnaître que les francophones sont victimes de discrimination et se butent à des obstacles sur le marché du travail. Les minorités raciales francophones, les jeunes francophones et les femmes francophones sont doublement désavantagés par rapport à l'ensemble des effectifs.»

Le rapport du Secrétariat d'État élabore des données intéressantes au niveau de l'emploi de la langue sur le marché du travail ontarien en indiquant une autre difficulté pour les francophones, celle liée à l'usage de la langue. Il semble qu'une minorité infime de francophones en Ontario peuvent utiliser exclusivement leur langue maternelle dans leur lieu de travail. En effet, les francophones doivent, plus souvent qu'autrement, travailler dans les deux langues ou dans la langue de la majorité.

Le rapport ajoute que même si le bilinguisme semble nécessaire aux francophones en Ontario pour réussir dans le milieu du travail, ceci ne se traduit pas nécessairement par un avantage économique. En effet, on ajoute, «C'est surtout les anglophones bilingues qui semblent tirer avantage de leurs compétences linguistiques, en dégageant en moyenne un revenu de 25 % à 30 % supérieur à celui des anglophones unilingues.»

À la lumière des données statistiques et des exemples susmentionnés, le verdict suivant s'impose : le gouvernement de l'Ontario doit faire un effort précis et courageux dans la protection et la promotion de sa population francophone en lui accordant une protection législative dans le cadre de sa politique sur l'équité en matière d'emploi.

L'ACFO provinciale est d'avis, pour que la main-d'oeuvre franco-ontarienne puisse participer pleinement au marché du travail ontarien, des programmes d'action positive et un financement de base doivent lui être réservés.

Par programmes d'action positive, nous entendons des programmes obligatoires qui examineront les méthodes actuelles de recrutement, de dotation et de formation dans les secteurs privé, parapublic et public en vue d'apporter des changements pour faciliter l'intégration des Franco-Ontariennes et Franco-Ontariens au sein des entreprises. Ces programmes obligatoires doivent avoir des objectifs ciblés et bien définis. De plus, des fonds doivent être offerts afin d'assurer la mise en oeuvre des programmes d'action positive et d'en permettre un suivi.

Par conséquent, l'ACFO provinciale vous recommande le suivant :

**M. Ali Maachar :** Que le gouvernement de l'Ontario procède à l'inclusion des Franco-Ontariennes et des Franco-Ontariens comme groupe désigné dans le cadre de la Loi sur l'équité en matière d'emploi ;

que le gouvernement provincial fasse promotion de l'embauche de Franco-Ontariennes et de Franco-Ontariens dans les secteurs privé, public et parapublic en mettant en oeuvre le plan quinquennal suivant :

(1) au cours des cinq prochaines années, offrir des subventions et des encouragements fiscaux de façon à favoriser l'embauche et la formation de membres de la communauté franco-ontarienne et de promouvoir l'adoption de programmes d'action positive ;

(2) simultanément, mettre sur pied une base de données complète pour établir un profil exhaustif de la main-d'oeuvre franco-ontarienne et aider à la mise en oeuvre de programmes d'action positive. Il faudrait en outre étudier les résultats des programmes d'action positive appliqués à l'Ontario ;

(3) à la fin de cette période, le gouvernement de l'Ontario doit étudier les résultats des programmes d'encouragement et d'action positive. Si l'on constate des progrès insuffisants, des mesures encore plus

sévères doivent être imposées, dont celle de l'adoption de programmes d'action positive ;

(4) que le gouvernement de l'Ontario introduise des mesures législatives sur le respect de l'obligation contractuelle afin d'obliger les entrepreneurs et les soustraitants qui font affaire avec des ministères et des organismes de l'Ontario, ainsi qu'avec des sociétés de la Couronne, à mettre sur pied des programmes d'action positive à l'intention des Franco-Ontariennes et Franco-Ontariens ;

(5) que le gouvernement de l'Ontario accroisse son activité dans la préservation, la protection et la promotion de la communauté franco-ontarienne.

Nous avons illustré jusqu'ici les arguments historiques qui témoignent des désavantages directs et systématiques qu'ont vécus les francophones en Ontario depuis plus de 100 ans, et nous vous avons présenté des données à l'appui, démontrant statistiquement l'effet d'exclusion de ces politiques et ces pratiques sur la minorité francophone. Il est évident que le gouvernement ontarien doit inclure les francophones à titre de groupe désigné, sans quoi il sera perçu comme allant à l'encontre de la Charte canadienne des droits et libertés. Merci à vous tous.

**The Chair:** Merci. We'll begin with the official opposition, approximately 5 minutes per caucus.

1450

**Mr Curling:** Thank you very much for your presentation. I had concerns too that the francophones were not included in the employment equity plan although I see, and rightfully so, as you cited, that the high rate of functional illiteracy is evident inside the francophone community and that in itself has shown us there's some neglect of services that were given to francophones, that historically they neglected themselves.

Do you see, in having the francophones included, that all the groups that feel they were discriminated because of language also will be asking to be included? I'm only taking the language point of view of the francophones now—I know it's also a cultural situation—that they themselves would also feel they should be included in the employment equity bill

**M. Michaud :** I believe it's important to know at this point—

**The Chair:** Monsieur Michaud, si vous voulez, vous pouvez parler en français. On a des traducteurs.

**M. Michaud :** D'accord, je pourrai répondre et si je me sens embûché par la question, je répondrai en français par bouts, possiblement.

I believe that in 1987, it was clear to the Ontario legislative party at that time that francophones did occupy a right place in the Ontario community. At that point, 500,000 francophones in Ontario had the right to education, health services and other social services and judicial rights.

It's important at this time that, if these rights are to be given to the francophone community, we as well give them an economic place in our society so that they don't become dependent on our province. If we are going to give them the right that Canadians have given them as a whole part of the history of our Canadian society, all rights should be given to them.

I understand what you're saying about other minorities and language rights that could be asked by other minorities. At this time, I believe we should answer the rights of the founding nations of our country and we will try to look at as well, with time, trying to service other culture and language rights that belong to Canada as a part of our nation.

**Mr Murphy:** If I could, je vous remercie pour votre présentation. C'est excellent.

I asked the minister when she was here why francophones were not included in the bill, and part of the answer related to the lack of sufficient information to show that there was systemic discrimination against francophones. I think to be fair the minister indicated a willingness to consider that inclusion, should there be further information. I guess the problem I have with that position is that there obviously was sufficient information to include francophones in the public sector employment equity programs the government has undertaken.

I'm wondering, do you know what data were used as part of that and whether that in itself is producing information that can lead to some conclusions, and whether that can be applied with respect to the inclusion of francophones in this employment equity bill?

**M. Michaud :** We have referred to the reasons that Mrs Ziembra gave for not including us. In fact, I think it was three days ago that Mrs Ziembra indicated the inclusion or exclusion was not clear to her at this point.

Some of the arguments, as we have indicated in this presentation, that medical people who have obtained that training, whether it be doctors or nurses, do have the same opportunities or equity in salaries, are not adequate arguments, according to us. We're afraid this one was used to say they're not equity groups that are discriminated against.

Unfortunately, in our population, Statistics Canada 1986 and 1991 shows as well that our cultural group does not participate at the same rate as non-francophones in these training institutions, so they don't become doctors or nurses or whatever professional field you would like at the same rate non-francophones do. That's the problem, I think, in the interpretation of certain statistics that have guided the exclusion of francophones in this bill. Does that answer your question?

**Mr Murphy:** Yes.

**The Chair:** I'm sorry. We've run out of time. We've exceeded the time in fact. Mr Tilson.



**Mr Tilson:** I would like to follow up, because I think the issue of language rights is an issue. There's no question that there are many groups in the province of Ontario that may not fit in the four groups that are referred to, but they feel they are discriminated against because of language. They may come from some community, they may be white individuals who come from a particular community, but because of their language they feel they're discriminated against.

The francophone community, of course, can say, "Oh, but we're a founding nation and our constitutional rights etc." I guess my question is, there's a great deal of difference between discrimination and discrimination that is preventing promotion or in fact the hiring.

You have given statistics between francophones and anglophones with respect to unemployment. Are you able to determine whether or not those statistics are because of discrimination or because of other economic factors, for example particularly francophone communities that may in general, for whatever reason, not be as successful as other communities?

**M. Michaud:** I'm not sure what you understand by "discrimination," whether discrimination would be the lack of services, so that the population known as the francophone community of Ontario is discriminated against because it does not have the tools it needs to acquire training that will give it an economic situation that is favourable to Ontario. I think that is a form of discrimination as well, and if we are going to correct that discrimination, we are going to have to allow them to acquire the positions that will let them become an integral part of our society in Ontario.

Discrimination is not just the fact that you're not allowed to be promoted to a certain level of a position. It can be the refusal of the tools you need to become a rightful part of our society in Ontario.

**Mr Tilson:** Are your submissions then not really within the employment equity legislation, that you are saying, "Listen, we expect and demand that the francophone community retain"—in other words, getting to the last two points you have put forward in the summary, at least I think it's yours; I have one here of four points of recommendations. I believe those are yours. If not, I'm sure you believe in them. Should those submissions more appropriately be made at another forum?

**M. Michaud :** I'm not sure whether or not this group or this commission has been mandated to discover what groups are most in need of regaining a rightful position in our workplace. I believe that is the fundamental philosophy behind this issue, to find the right place or to—in French I would say un rattrapage. We're trying to find, with this commission, the right way to give all groups in Ontario an equal opportunity in the workplace.

Francophones do not have at this time, but hopefully in the future they will have, their right place and will acquire equity in the job place. At this time they do not, and whether it be because they don't have the right tools or not, we must make way so that this group does become a viable economic part of our society, and I think that's the issue we're trying to get to here.

1500

**The Chair:** Sorry, Mr Tilson; we've run out of time.

**Mr Winner:** Je vous remercie aussi pour votre discours et vos recommandations. Je pense que vous êtes d'accord que, si les francophones ont le même niveau d'éducation et de formation, ils ne rencontreront pas les mêmes obstacles que les membres des autres groupes désignés, et que ce gouvernement adresse le manque de formation et d'éducation par des moyens comme the Ontario Training and Adjustment Board, the employment equity program in the Ontario public service, et aussi l'extension des collèges francophones en Ontario.

Si l'éducation et la formation sont à la base du problème, est-ce qu'il est nécessaire d'inclure les francophones comme classe désignée sous le projet de loi ?

**M. Michaud :** Il est certain, à ce moment-ci, qu'il y a un grand manque, et on est à la veille de corriger ce grand manque de formation pour les Franco-Ontariens et les Franco-Ontariennes. Mais il faut dire aussi que cet outil, qui est à la veille d'être développé, n'est pas sur pied à ce moment. D'ailleurs, c'est une lacune qui existe depuis 1912 en Ontario. Cette lacune qui existe depuis 1912 a créé chez nous des analphabètes dans le nord qui comptent jusqu'à 60 % de la population.

Pour corriger ces problèmes d'anormalité dans notre société qui causent des hauts taux de chômage, d'assistés sociaux, il va falloir dès aujourd'hui mettre sur plan — et on vous suggère un plan quinquennal pour cinq ans. Ce sont des plans immédiats pour corriger les anormalités d'équité au travail pour les Franco-Ontariens et les Franco-Ontariennes.

Dans le temps, autant qu'on voudrait corriger ces anormalités autant chez les femmes que chez les autochtones, chez les handicapés et chez les ethnoculturels, on espère qu'on aura eu la chance dans cinq ans ou dix ans de les corriger pour les Franco-Ontariens et les Franco-Ontariennes. À ce moment, les anormalités d'équité en matière d'emploi existent pour les Franco-Ontariens et les Franco-Ontariennes. On doit les corriger dès aujourd'hui.

**Mr Winner:** Une autre question ?

**The Chair:** Finale, oui.

**Mr Winner:** Il me semble que la majorité des francophones sont les femmes, les autochtones et d'autres groupes désignés. Il y a une protection sous le projet de loi pour la majorité des francophones.

**M. Michaud :** Je pense que le problème s'est illustré d'après les statistiques. Cette protection ne suffit pas pour placer les Franco-Ontariens et les Franco-Ontariennes sur un pied d'égalité avec les autres, puisqu'ils sont en chômage et sont assistés sociaux à un plus grand taux que n'importe quelle autre partie de la population ontarienne.

**Mr Winninger:** Merci. Je comprends votre position.

**M. Michaud :** Merci.

**The Chair:** Monsieur Michaud et Monsieur Maarhar, merci pour votre présentation et votre participation ici aujourd'hui.

SOUTH AFRICAN SUPPORT AND  
INFORMATION CENTRE

**The Chair:** The South African Support and Information Centre, Mr Kekana. You have half an hour for your presentation, as you've seen with the previous delegation. Would you please introduce your friend and colleague there. Once we've done that, we can begin.

**Mr Maisela Kekana:** This is Patrick Cindi.

Mr Chairman, members of the committee, ladies and gentlemen, I guess I don't have to tell you why we are presenting this paper, because we feel it's necessary and essential that people from our group and those other so-called designated groups, being women, the disabled and natives, also have a right to participate fully in this society, like everybody else.

I'll start by reading excerpts from what we compiled in the organization we come from.

For the sake of our children, in order to minimize the bill they must pay, we must be careful not to take refuge in any delusion; the value placed on the colour of the skin, the sex one bears and the age one is at is always and everywhere and for ever a delusion. We know that what we are asking is impossible, but in our time, as in every time, the impossible is the least we can demand. We are, after all, emboldened by the spectacle of human history in general, and African history in particular, for it testifies to nothing less than the perpetual achievement of the impossible.

Why do we think this legislation or this bill is necessary? This legislation, whose time we think is long overdue, should have been here over 200 years ago.

Canadian society must bear the moral weight and unfortunately, even at this late hour, there are still those in our midst who do not seem up to the task.

While numerous studies have been commissioned over the years, the aboriginal, the visible minorities, the disabled and women continue to experience high rates of unemployment and more discrimination in finding employment, in retaining meaningful career employment and in being promoted.

The May riots of last year in Toronto and the subsequent Stephen Lewis report could have been a valuable

provincial, and hence national, lesson on the full implications of the politics of exclusion and white supremacy. There is no national consensus on what we have learned and what we should do.

Neither do we seem to learn anything from the situation in the US, which in many respects mirrors our own here. In the US, enduring structural inequalities have relegated minorities such as African Americans, into a state of permanent "other" in American life. This situation does more than prevent minorities from fully participating in the larger society. It also fundamentally harms the social, political and economic interests of the majority. It is the situation that has hastened the onset of a wide-ranging socioeconomic crisis that is most pervasive and endemic in the great US metropolitan areas.

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For the affluent white American, this crisis has precipitated a flight out of the urban centres to the surrounding suburbs. There they have insulated themselves against larger concerns and have developed enclaves whose basic disposition towards the state and society is highly self-centred and holds out little hope for collective solutions to social problems.

To the African Americans, who have always been on the periphery of society, this crisis has cast a shadow of nihilism over large sections of that community, especially the young. This manifests in the daily experience of coping with a life of horrifying meaninglessness, hopelessness and alienation in the extreme. The frightening result is the numbing detachment from others and a self-destructive disposition towards the world. Life without meaning, hope and love breeds a cold-hearted, mean-spirited outlook that destroys both the individual and others.

As it is true for the US, so it is for Canada. An assessment of an immigrant African community to establish trends that affect all aspects of their collective experience, from birth throughout their educational career to their employment disempowerment, was carried out in 1991 and 1992. To this end, senior members of our organization were mandated to carry out this extensive research into some of the most pressing problems that accentuate a high dropout rate of African students and high incidence of social dysfunction among the young African Canadians and the seemingly persistent pattern of high unemployment rate endemic within the African Canadian population, thereby hindering normal integration of Africans into the mainstream of Canadian life and productive workforce.

African Canadian students comprise a significant portion of the African Canadian population, and if these students continue to perform poorly, it follows that the whole African Canadian community will be marginalized. The African Canadian students of high



and secondary school age constitute approximately 6% of the entire student population in Ontario, yet suffer an unthinkable high dropout rate of 50% as of grade 9. This situation challenges all sectors of our society. If left unattended, it could endanger all communities and impact negatively on the entire society.

Shifts within the global economy also hold out their own special difficulties. In this regard, the ascendancy of the Reagan-Bush conservative economic and social model, blind to the vast social problems that have motivated Americans themselves to reject this model, is still sending shock waves all over Canada, particularly in the province of Ontario.

These historical changes are not confined to the province of Ontario and Canada alone. They are truly a global phenomenon. In many countries the once effective national sovereignty is declining. In extreme cases ethnic strife or even civil war is the result. Particularly in eastern Europe and the former Soviet Union, but elsewhere as well, ethnic consciousness is on the rise, accompanied in some places by the threat, and sometimes by the reality, of "ethnic cleansing." The constant threat of Quebec separating is a case in point.

Contrary to the increasing animosity within nations, there is a growing movement towards the consolidation of enormous multistate economic blocs. The disorientation resulting from all of this is universal. At the level of our understanding of what constitutes a sovereign state and its role in society, the transformation we are now experiencing is the most profound one since the French Revolution.

Contradictions have always been a permanent feature of human existence. Life is always made up of continuities and discontinuities. Even as our environment is changing, we can choose to focus on those things which remain static, to shrink, if we like, from what is happening around us. From our comfortable homes in Toronto, it is easy for some of us to think that things will go on much as they have in the past. Our jobs will always be there in the same place. Our city, our province and our country will go on much as in the past.

The imminent crisis that now threatens to tear Canada apart arose from within. However, these internal stresses have been greatly heightened by the new global forces that are now wrenching Canada into a new and unfamiliar shape. The new Canada is barely intelligible to our decision-makers, who do not know how to deal with an altered world system that has greatly changed the way Canadians relate to each other. British Columbians naturally focus on the rising power centres of East Asia. Quebecers, who have remade their society in recent decades and established a new business class, are most concerned about winning new markets for themselves in both Europe and the United States. Ontarians, long used to occupying the central place in Canadian life, are becoming increasingly anxious about how the techno-

logical revolution and the shifting global division of labour is affecting their long-established and valuable manufacturing sector.

Canadians, particularly Ontarians, find themselves facing a terrible dilemma. All nations are being drawn inexorably into the wider world. However, for us Canadians the pressure to conform to the new global order comes primarily from our powerful neighbour down south, and the US, as those with eyes shall see, faces the very real prospect that it will be the first victim of globalization. Our real dilemma is this: How do we face the necessary challenges of the new global age without becoming victims of the socioeconomic crisis that now threatens the elephant next door?

It is clear that the new social and political order has descended upon us. The free trade agreement and the North American free trade agreement have set rules for Canada's economic and industrial policies. They are real, if unacknowledged, the fourth level of government, planted atop the municipal, provincial and federal levels. The new economic order does not take into account anything that will reinforce social peace and traditional ways of doing things. Instead, propelled by new technology and corporate power, it is advancing a program which is nothing less than the remaking of the world.

The Holy Grail of the globalization agenda is competitiveness. The unintended consequence of the search for it has been havoc. Plant closures; the economic base of entire regions is laid to waste; small- and medium-sized businesses are taken over or driven into bankruptcy; the business sector stops emphasizing the production of goods and the selling of services; and money games become the focal point. Takeovers, leveraged buyouts, junk bonds and currency speculation are hideous results of conservative deregulation at both the domestic and global level. Cost-cutting to achieve competitiveness is the domestic equivalent to competitive deflation on the international level. Such strategies did much to create the long recession that began in the English-speaking countries in 1990 and has been spreading to the rest of the world ever since.

The byproduct of the new world order is the politics of exclusion. Rising unemployment leads to a sharp rise in the number of people who are permanently poor, violent crime and the welfare plague society. Such a crisis inspires the search for scapegoats.

It is scapegoating that has spawned the new, exclusionist right wing with values that are different from those of market conservatives. Immigrants, visible minorities, women, the disabled, natives, AIDS sufferers, homosexuals and welfare recipients are its targets. The process is far advanced in both North America and Europe.

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A society that fails to utilize all its available resources effectively is doomed.

In conclusion, without offering anything specific, given our limited knowledge of the intricacies and technicalities involved in the bill, we firmly believe that for the bill to have any teeth, it must be made equitable to all, especially those who have been excluded from the process, the so-called designated groups.

**The Chair:** Thank you very much. Mr Tilson, four minutes and a half.

**Mr Tilson:** Thank you, sir, for your presentation. I look at some of the thoughts you've presented to us, and much of your concern seems to be an emphasis on a lack of availability of education or encouraging of education or training, whether one is currently in school and leaves and then tries to come back and that sort of thing. That can apply to all kinds of groups, all kinds of minorities, and women, indeed, who have left the workforce and then try and come back, and the difficulties they encounter.

I guess I'd like you to tell me a little bit about the discrimination: whether you feel with respect to your specific groups that discrimination may be responsible for a percentage of the problem or whether it's other factors.

**Mr Kekana:** I guess, as you can tell, you have now heard from the organizations we come from that we are officially former South Africans, so we are still South African by heart probably but physically we are here in Canada. We know what discrimination does. When you legislate us out of education, you definitely make sure that we are not going to get employment.

So discrimination is a permanent feature. Whether it's subtle or it's brutal, as it is with apartheid in South Africa, it's still discrimination. So we still face the same discrimination here.

**Mr Tilson:** I understand that, and as I look, for example, at page 6, the question you do deal with with respect to education, you say, "The African Canadian students comprise a significant portion of the African Canadian population," and then you talk about the dropout rates. One of the concerns, of course, whether it be discrimination or lack of training—and the government, to be fair, although we've criticized how it's going about it—is the effort of keeping up with the rest of the world and educational programs.

I guess I'm getting back to you that, for this purpose of employment equity, are you saying to us that there are inadequate educational programs for minority groups or are you saying, "No, there is simply out-and-out discrimination and this bill is the only solution"?

**Mr Kekana:** Discrimination is a wide—it could be in schools, it could be in the job sector, it could be anywhere. But as said of workers now, it's time to equalize employment, not education, I believe. So I believe this is just to highlight what discrimination does, because other people justify that why we don't get into

these jobs is because we don't have education, but because they deny us education, then they can bring about all these arguments that we should go back to school before we can get employed.

**Mr Tilson:** So you're saying not only are you denied jobs but you're denied education.

**Mr Kekana:** Yes, sir.

**Mr Tilson:** You go back even further than the jobs.

**Mr Kekana:** Yes, sir.

**Mr Patrick Cindi:** Can I just say, because I think you talked about the historical background of discrimination, discrimination lays the foundation for excluding from jobs, from schools. When students drop out of those schools, obviously they enter the workforce and they get discriminated against.

**Ms Harrington:** I appreciated your presentation. I thought you gave a very thoughtful look at the global situation as you see it and some of the terrifying parts of it, that is, your statement about the politics of exclusion and the search for scapegoats. Certainly we in Ontario are part of the global situation, but we certainly hope that this legislation is going to do something meaningful.

I want to, first of all, ask you something about your organization. Are you mainly based in Toronto?

**Mr Kekana:** We are a federally registered organization. Because of racism and discrimination again, we don't have the resources to implement everything, but we do have people who are functioning out of their own apartments, whether it's in British Columbia or whether it's—we are actually national.

**Ms Harrington:** How many people would belong to your association?

**Mr Kekana:** Where? Here in Toronto or nationally?

**Ms Harrington:** In Ontario. Okay, you're called the South African Support and Information Centre.

**Mr Kekana:** Yes.

**Ms Harrington:** So you don't actually have a membership then.

**Mr Kekana:** We do have.

**Ms Harrington:** Okay. About how many people would you be representing?

**Mr Kekana:** It fluctuates, but at any given point we'll have about 100 to 200 people.

**Ms Harrington:** Is it mainly in Toronto?

**Mr Kekana:** Mainly in Toronto but, like I said, we have people in British Columbia, Saskatchewan and—

**Ms Harrington:** To give us a picture of the type of jobs they are in, can you give me an idea of the type of people and their situation in Toronto?

**Mr Kekana:** That's interesting, because we have some people who are professionals, who are lawyers and doctors and others from South Africa, but they



come here; they find that they can't. They have been told to go back to school. They go and take a master's here, a master's there and still come back and they don't have good jobs. So we find out people are going to school until they are 60. After school, they retire. They have to go to pension. So we can't continue doing that.

**Ms Harrington:** For this legislation to really work, the people in the designated groups have to have the information about how to, first of all, fill out the survey and be involved in a positive way to try and change the workforce with their employer and work together at this. Do you feel that the people you represent in their occupations want to participate and are looking forward, say, eagerly to be part of this process? Do they know about it?

**Mr Kekana:** This process we're in now?

**Ms Harrington:** Yes.

**Mr Kekana:** Yes, they do.

**Ms Harrington:** So they're feeling that this is going to be a positive opportunity for them?

**Mr Kekana:** Definitely.

**Ms Harrington:** Good.

**The Chair:** One final question.

**Ms Harrington:** I want to ask one further question, and that is, we've heard from some people who appear here that this might cost too much, that is, setting up a commission and a tribunal, and that we don't need more regulation; you know, business is overregulated now. What would you say to these critics of this legislation?

**Mr Kekana:** I guess that's what Reagan and Bush said, you know.

**Ms Harrington:** Okay. Thank you very much. Ms Carter?

**The Chair:** I'm sorry, there's no more time. Mr Curling.

**Mr Curling:** Thank you very much for that presentation. I know you didn't deal specifically with the bill, and I think it's important that this committee hears some of the background and the concern and the historical nature of discrimination and what causes it.

One of the most important things about even after seeing this kind of historical discrimination that happens—as you say, it's rather global—is how legislators like ourselves sit down and write an effective bill, laws, to wipe out this kind of systemic and endemic discrimination. The rhetoric sometimes keeps us—as a matter of fact, it's an empty belly kind of stuff. It's lovely, filled with the academic stuff and it's nice in a way, but the fact is that—

**Mr Anthony Perruzza (Downsview):** The challenge was made yesterday. Suggest the changes, Alvin.

**Mr Curling:** The rhetoric is coming through again.

**Mr Perruzza:** Suggest the changes.

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**Mr Curling:** So therefore it is so important that the laws reflect some of the deep, hard concerns that you have here.

The question I usually ask—especially countries like Ontario and Canada, which are very, very rich, we throw money at things and sometimes it doesn't happen. My question to you is, isn't it extremely important that we don't have laws that are weak, that you are better off having no laws at all, because having laws that are weak, what it does is puts money in the pockets of lawyers and it puts a lot of politicians and all that getting elected for promises. How do you feel about a law that would be weak in itself, so that maybe the first case you could have in employment equity around here, a case would be about the next three years?

**Mr Kekana:** What you are saying is that a weak law is worse than no law at all?

*Interjection.*

**Mr Curling:** Will you give the presenter a chance to respond.

**The Chair:** Please continue. Disregard the occasional disruption.

**Mr Kekana:** I believe that when a man is hungry, half a loaf is better than no bread at all. Even if a law is weak, at least still a law is there; it can be implemented and effected. But if there is no law at all, then we are back into the jungle, where anybody can do anything, any time, wherever they feel they like. So we've been having no law here for the last whatever years and we've been facing hell in this heaven which you just did describe, how rich it is. So we'd better get a little bit of that heaven, even if it's just to step in the door and see what's happening in heaven.

**The Chair:** One final question.

**Mr Perruzza:** I could go home right now and—

**Mr Cindi:** Can I just address that question? Maybe Mr Curling is saying that it's better not to have a civil rights bill.

**Mr Curling:** Sorry?

**Mr Cindi:** Would you support the civil rights bill, for instance? There is a civil rights bill in the United States. Some people argue that it's too weak, right? From your own perspective, you'd rather not have that civil rights bill, if I understand you quite correctly.

**Mr Curling:** The fact is that there are laws in this country, the Human Rights Commission that deals with discrimination. This wants to, in respect of that—sometimes we get lost. Some of my colleagues here felt that we don't need to respond to this bill because what is here is good. It is a matter of improving—

**Mr Perruzza:** I didn't say that, Alvin. I certainly didn't say that. What I've been trying—

**Mr Tilson:** Point of order, Mr Chairman: I'm trying to hear what Mr Curling has to say.

**The Chair:** Yes. Continue, Mr Curling.

**Mr Curling:** It is to improve something here. Of course I think it's good that the bill is before us to be improved and we have that opportunity. So we do have laws and human rights and all that here. It is felt that it has not been effective. The opportunity here is to sort of make it very effective.

My concern, basically, and that's why I really applaud your presentation, is for the understanding of all lawmakers here that we need to move to where it is rather effective. That's my point. As a matter of fact, maybe I don't need a comment from you. If you do want to, that's fine.

**Mr Kekana:** So what you are saying is that this bill is not effective or won't be effective as a law.

**Mr Curling:** It could be better.

**Mr Kekana:** Oh, it could be better, but there has to be something. That's what you're saying.

**Mr Curling:** Yes.

**Mr Kekana:** Okay. Can you make suggestions of what should be—

*Interjections.*

**The Chair:** All right, please.

**Mr Curling:** That's basically the idea, of course, was to hear your suggestions.

**The Chair:** And he answered by posing you a question.

**Mr Fletcher:** That was his answer?

**The Chair:** And that was your answer?

**Mr Kekana:** Yes.

**The Chair:** We've run out of time. Thank you very much for your presentation and coming here today.

#### DISABLED PERSONS WORKING TOGETHER

**The Chair:** Disabled Persons Working Together, Bruce Wenham. I want to welcome you, Mr Wenham. We have half an hour for the presentation and you can leave as much time as you want for the questions and answers. Please begin any time you're ready.

**Mr Bruce Wenham:** Thank you for inviting me to this forum. It's something of a novelty to me.

Before I begin my remarks, I just want to preface them. Employment equity has been around for some time in the federal sector. It has not been very successful. I believe it's in part because it's done as a voluntary measure, even though it's legislated. There are lessons to be learned from why employment equity hasn't been effective in the federal sector.

A second point, I think, to put this bill into context is the changing economy of Canada in which this legislation is going to operate. The Canadian economy has been through major restructuring, and I came across this

article from a publication by the Federal Business Development Bank which stated:

"During the past decade, small businesses have become major players taking on a significantly increased role in the Canadian economy. They account for a large proportion of Canada's sales and profits and continue to be the major source of job creation in this country. In fact, between 1979 and 1989, they accounted for more than 80% of all new employment, or a total of 21 million new Canadian jobs."

So most new employment is being created in small businesses. I would argue that the smaller businesses or the smaller employers referred to in the act, which start at 50, should be reduced to be the same as that in the public sector, which I believe start at around 10.

With reference to the goals and timetables within the act, I find that under regulation 21, small employers do not have to set any numerical goals. I can't understand: Why have goals and timetables if there is no way to measure their effectiveness? So I would like to see that small employer deleted from 21.

I also find the method for calculating the numerical goals as laid out in the regulations fairly unclear, and I'd quite like to see the commission establish a basis or some sort of formula to calculate this, because if you're presented with a bunch of demographics, I'm sure different companies are going to come up with radically different answers and you won't have a standard solution.

Finally, on the question of timetables, despite every employer having to set out specific timetables in an employment equity plan, there seems to be no overall target date by which time one could reasonably expect the workforce to reflect the composition of the community.

Just a couple of more points and then you can throw questions at me.

With respect to barriers, in section 10 of the bill, which deals with the removal of the barriers, I feel there is far too little information and guidance for employers to effectively address this issue. You know, "What is a barrier? I'm a small employer. Where do I find this information?" Clause 11(1)(b), again, which deals with positive measures, also needs to be made more explicit. I notice that in the bill itself the term "positive measures" is used, but I got a bit confused. In the regulations the word "qualitative" is used. Shouldn't there be a consistency between the two?

Neither the bill nor the regulations have any mechanism at all to evaluate what barrier removal or positive measures have been taken, and possibly to monitor that.

Finally, with regard to the information—and I think this is a very important issue—there is no provision in the bill to make the data collected available to the public; neither is there access to employment equity



plans by third parties. Both of these I think are essential if there's going to be effective monitoring of the impact of the legislation.

My final comment: I am a bit concerned that the amendments to the Human Rights Code with the employment equity—I do think this may close off a potential avenue of complaint. The reasoning behind that is that if the complaint falls under a certified employment equity plan and in due course that complaint will be resolved by the current practice, the complainants will basically have to hang around until that occurs.

So that basically covers my queries about the bill. Otherwise, I think it's quite good.

1540

**The Chair:** Okay, thank you. The government members have a minute each.

**Ms Harrington:** Yes, I'll leave time for my colleagues this time.

I just have a couple of quick questions. From your last few comments, it sounds to me as though you're taking the position that, yes, this bill is going to be effective and will work, and that is, I think, our main concern now: making sure that we put forward some amendments to ensure that it is going to have the effect that we want it to have, and that means real change in our society. Do you feel it is going to be effective? Workable?

**Mr Wenham:** Yes, I do think it can be effective, but I think it can be strengthened a bit. I do realize that a lot of employers will be moaning about, "Oh, no, another piece of paper which goes on top of my workers' compensation, my pay equity etc." But the community I represent is—I believe, in the disabled community, approximately 80% of our community are either underemployed or out of work. I would like to see equitable access into the workforce. This also goes hand in hand with equitable access into training.

The last thing I want to see is, "Yep, we'll hire you because you have a disability." That is not the question. The question is, I want the equality of opportunity, the equality to compete on an equal basis, and to achieve that, those systemic barriers need to be removed.

**Ms Harrington:** Thank you. So we are trying to get a workable and a fairly simplified process there.

We've heard other people talk about the cost of modifying the workplace for people with disabilities. Can you give us an idea of what these costs might be?

**Mr Wenham:** I have read, and I can't remember where so it could be quite spurious, but I think the average cost of accommodation pretty well works out around about \$500. On occasion, some people will need specific mechanical aids. However, I would argue that, yes, there is an initial cost, but is it not cheaper to, say, fork out a couple of thousand dollars for some special

equipment than to keep that person on family benefits or welfare for the rest of his or her life?

**Ms Harrington:** Very good.

**Ms Carter:** Thank you. I understand that people in your group support the method of self-identification as part of the employment equity process, and I think if there were problems with this method, that might be where they would be. People say, "Where do you draw the line?" and "How is this going to work?" What can you tell us about the basis for your support of this policy?

**Mr Wenham:** I believe a group called Disabled Persons for Employment Equity launched some sort of lawsuit against a few of the banks because in terms of trying to sort out who was disabled as members of their workforce, there wasn't self-identification. It was like, "Well, you wear glasses, so you have a disability." I think self-identification is probably the best way.

Now, I think this would only really work if the cultural attitudes change, and I do think that hitherto, if I had a hidden disability such as epilepsy, I may well not have wished to disclose that to my employer. However, being a bit cynical, if there is a perceived advantage in self-disclosing, I may well disclose that. The difficulty around it is, is it going to be a disadvantage to me? I think historically, yes, it would have been a disadvantage, but hopefully attitudes are changing a bit and people can be more truthful and, by making a self-disclosure, not be discriminated against.

**Ms Carter:** And of course if somebody with something like epilepsy did get a job and the employer didn't know, and then it became evident that they had a disability, then they might be liable to lose their job, whereas if it's all up front, then you wouldn't face that same problem.

**Mr Wenham:** You see, it's a difficult one. People will take jobs, maybe at any price, but if you do something like that, essentially I think you're entering into a breach of trust with your employer. "Okay, so that's the first lie. When's the next one going to happen?" From the employer's point of view, I can sympathize. "You should have told me up front and not left it till that sort of scene arose."

**Ms Carter:** There will be, I understand, an educational process to explain to people that it is in their interests to self-disclose.

**Mr Wenham:** The impression I'm getting at the moment is that, especially among smaller employers who don't have large human resource sectors or what have you to educate their staff, there's a great deal of, not always panic, but a great deal of uncertainty in understanding.

I believe that when the Americans with Disabilities Act was introduced, all these wonderful, experienced consultancy companies sprang up. They would send out

letters of dire warning: "If you do not comply with this, you'll be subject to x thousands of dollars in penalties. In return, hire our services." They'd subsequently turn up with what was basically available on the public library shelves. There is that sort of abuse of any system.

In terms of educating the workforce, I think it's important. It's got to be part of it, but then, again, in the regulations you don't have to fill in the form. You can return it empty.

**Mr Murphy:** Thank you very much for your presentation. I appreciate the opportunity to ask you some questions, because some of the comments you made give rise to a few things I'd like to follow up on. One was your discussion about your concern about the amendments to the Human Rights Code.

There was one thing in particular with respect to accommodation for disabled persons that did cause me concern, because it seems to me there's the potential, the way it's drafted, for a person with a disability who isn't hired or isn't given a promotional opportunity to go to the Human Rights Commission and then be told to go to the Employment Equity Commission because of "reasonable efforts." They conclude that it's all right under the employment equity plan, but may then have to go back to the Human Rights Commission, because it may be a different test under the Human Rights Code. I'm wondering if you could talk a bit about that problem.

**Mr Wenham:** In my understanding, if you look at the wording, in the Human Rights Commission it would be that the employer would have to show providing this accommodation would produce undue hardship. It's much more soft in the regulations. It just says "has made reasonable efforts." It loses in that way. But, on the other hand, if it's part of the employment equity plan that's been filed and been accepted by the Employment Equity Commission, then "We are making reasonable efforts" is a valid defence. For that particular worker, you're out of luck. Your human rights avenue has been shut, because the employer is making reasonable efforts, and he is not suffering undue hardship, which would have been the defence for the human rights one.

**Mr Murphy:** The Human Rights Commission has a certain amount of delay and I could see there being three- and four- and five-year delays before there being any kind of result coming out in any determination because of the bouncing back and forth. What that leads to for me—and I'd like to have one question of follow-up on that—is that in your experience or through your organization you would have had, I would think, a fair amount of experience dealing with the commission as to what "accommodation" means under the Human Rights Code. How have you found that to work out in practical terms? I know you've quoted the figure of \$500. Could

you give us some sense of how that's worked in practical terms in the Human Rights Code complaint context?

**Mr Wenham:** No, I'd have to give a written answer to the clerk and check on it.

**Mr Murphy:** Okay, thank you. Because one of the things that leads to, and one of our concerns, is that the Employment Equity Commission is a new bureaucracy and has essentially been created from scratch. There is an experience level built up to some degree in the Human Rights Commission, although it has a backlog which I think could be fixed, and there's the Pay Equity Hearings Tribunal. I think there's a certain logic to putting that together and creating an employment commission where you could have money dedicated to education, some to the policy part and some to the quasi-judicial kind of review things. I'm wondering if you would think it might be a good idea to put that experience together in one group as opposed to separating it here and there, all over the place, and reducing the amount of bouncing back and forth that might be caused.

1550

**Mr Wenham:** Yes, to a degree that could make sense. Why do I have to knock on three doors to lodge a complaint? Can I not knock on one door? It might be cost-effective.

**Mr Murphy:** You talked about—and I think it entirely valid—the notion that it makes more sense from a societal perspective to have people spend \$500 or \$1,000 to accommodate someone in the workforce rather than have someone on family benefits or welfare. Have you any thoughts or done any studies on the allocation of the cost of accommodation between government and the private sector as a tradeoff against the benefit government and society get from removing someone from family benefits?

**Mr Wenham:** It's an interesting one. Imagine I'm working. If I approach vocational rehab services for the special equipment I need to do my job, I probably won't get it. But if I've got the promise of a job and I need the special equipment to get it, then VRS will pay up for it. But I do think business ought to contribute something, because otherwise why have it? If it's not going to make a contribution to my business, if it's not going to pay off at the bottom line and make my shareholders happy, I don't think I'm going to have it. Yes, maybe there is this upfront cost, but I would also suggest that quite possibly there ought to be a tax break for that. If you buy any capital equipment, you can depreciate it over three or four or five years, whatever. Why not do the same for accommodation?

**Mr Murphy:** That's exactly where I was going. That kind of incentive system I think could be put in place.

**Mr Wenham:** Yes, very much so.



**Mr Tilson:** I'm glad Mr Murphy raised that and you pursued it, because certainly the small business person in particular—over 50 or whatever number one wanted to take—who may unintentionally be discriminating against the disabled person, if you take any particular occupation, any particular job, may not have the equipment, whether it be a word processor or a piece of equipment that disabled people can use. They are trying to stay alive and, all of a sudden, legislation comes along with certain timetables which you've referred to. Not only are they going to have to have human resources people to set out these plans or hire a consultant to set out these plans, but if they're deemed not to have an appropriate plan or if they develop an appropriate plan, then they're going to have to do other things.

I'd like to continue with what you were talking about with Mr Murphy, because I think that's very important. It's fine to set up all these plans, but then what do you do?

**Mr Wenham:** I think this is possibly why small business doesn't have to file the plans till 1997, and has a three-year leeway, which I think is a bit too long. However, during those three years, and if the plan is implemented, I would think that with a bit of foresight and talking to the accountant, he could set aside in his targets whatever you want to call it, say, "Yes, right, and over the three years we're going to hire one person with a disability and we're looking at this particular occupational area." Then again, for the person the company may hire there may be no accommodation cost or no special equipment needed. I personally don't use any special equipment. However, if there were that extra incurred cost, I think that should be factored in through some sort of accounting mechanism so that it could be defrayed as part of the overall business expenses.

But I think one of the problems which I haven't quite thought through is that if there is a high ongoing cost—say, interpretative service or something like that—which is not in a sense tangible—I mean, it's not a lump of metal with a plug on the end of it—I'm not entirely sure how you can write that off. But no, I definitely think that businesses should have some mechanism to defray the extra cost.

**Mr Tilson:** Do I have time for another question?

**The Chair:** Yes.

**Mr Tilson:** I'd like you to comment on placement opportunities, which affect all groups, not just the disabled but all groups. One goes through with the plans and one determines that a numerical goal must be reached by a certain time and within the timetable. My question is, should changes in the representation of these designated groups occur only if a position becomes vacant or requires a replacement, or should a new position be created?

**Mr Wenham:** No, you can't create new positions

just for the hell of it and then crank up the numbers.

**Mr Tilson:** I'm glad you said that, because we'll be in deep trouble.

**Mr Wenham:** I would think that in your equity plan you're going to have, "Right, we're going to have some of it roughly based on past experience, a certain amount of staff turnover, whether it's retirement or people moving on to other jobs." Natural vacancies will occur. Hopefully, if we get out of this recession, we might start expanding, boom times. On that basis, you're looking at what the potential level of vacancies is going to be and then applying targets to those. We would like to meet those.

Now, you'll notice that all of this stuff is framed in terms of making reasonable progress. It doesn't say you have to fill in all these—

**Mr Tilson:** Oh, I'm not so sure. I quite agree that if our economy unfolds the way we hope it will—in other words, if we expand, more jobs will be needed and so on—then this plan will work. The difficulty is that if the recession continues for a period of time and timetables are to be met as set forth in vague terminology of the commission, which is pretty vague as far as the regulations are concerned, then some of the small firms particularly are going to be in deep trouble.

**Mr Wenham:** No, I think the smaller employers don't have to file their reports till 1997. The first review of everything's going to take place in the year 2000. Hopefully, I'll be retired by then, but this whole point is that I think—

**Mr Tilson:** I don't know whether you meant that sarcastically, that you'll be away from the mess or not.

**Mr Wenham:** We had boom times here in Canada, I believe in the 1980s. I wasn't living here at the time, but we didn't introduce it then. What are we going to do, wait for the next economic growth period to introduce it? You'll wait until doomsday. Introduce it now. Introduce it during tough times. It may be a slightly bitter pill for some people to swallow. At the moment, because unfortunately all this stuff is in the regulations, not in the bill, depending who's in power come the next review, those regulations could change quite dramatically.

**Mr Tilson:** Which is the criticism of most presenters.

**Mr Wenham:** Well, that's one thing, yes.

**The Chair:** Mr Wenham, thank you for coming today and for participating in these hearings.

REGIONAL MULTICULTURAL YOUTH  
COUNCIL/MULTICULTURAL ASSOCIATION  
OF NORTHWESTERN ONTARIO

**The Chair:** The next group is the Regional Multicultural Youth Council/Multicultural Association of Northwestern Ontario, Mr Aaron Goldstein. Mr Goldstein, you have half an hour for the presentation.

**Mr Aaron Goldstein:** Thank you very much, Mr Chair and members of the committee. My name is Aaron Goldstein and I serve as the press officer of the Regional Multicultural Youth Council/Multicultural Association of Northwestern Ontario. Better known as RMYC/MANWO, the mandate of our organization is to promote diversity through cross-cultural awareness.

Though I've provided you with some information, I'll tell you a little bit about both organizations. MANWO is the umbrella organization for the various cultural, ethnocultural and racial minority groups throughout northwestern Ontario, a region that is nearly two thirds the land mass of the province. The RMYC is part of MANWO with a focus on youth.

The manner in which awareness is promoted is as diverse as the people who have involved themselves with our organization. Small and isolated communities have been brought together through both recreational and avocational activities that include cultural performances to celebrate and share our diverse and rich heritage. We are also involved in advocacy and community development work and have established a unique alliance with the first nations and francophone communities in northwestern Ontario.

1600

More recently, in partnership with 10 first nations bands, including our neighbours Fort William First Nation and the home community of our own youth camp coordinator, George Ishaqid of Aroland First Nation, we facilitated the Summer Camp '93 training program. Designed to promote healthy lifestyles on the reserves, aboriginal youth were trained by our summer camp team of their peers from different cultural and racial backgrounds. They had a chance to learn leadership and organizational skills to empower them to deal with the negative lifestyles they had identified, such as problems of urban integration, the unacceptably high school dropout rate and the current suicide epidemic on the reserves. While many live lives of different rhythms and beats, the exercise created an orchestra of harmony and enabled both the aboriginal and non-aboriginal youths to share their experiences and work together to improve the quality of life for the next generation.

Since joining the RMYC in 1990, my role within the organization has been that of an activist as well as an advocate. In July 1992, on the heels of the Stephen Lewis report and the Employment Equity Commission report, I was responsible for preparing a commentary, which we presented to Anna-Marie Stewart, the assistant deputy minister of the Ontario Anti-Racism Secretariat. Recommendations in the paper, which we also submitted to Mr Lewis and Mrs Zanana Akande, included: the standardization of the provincial minimum wage; the establishment of a post-secondary education trust fund; a teen court program; the inclusion of human rights and anti-racism education in the curriculum;

youth representation on all relevant government boards and commissions; and the establishment of a government structure to represent youth—whether ministry or secretariat.

We believe in these recommendations and have done our best to act on them. This past January 20, I appeared before the standing committee on resources development, which was conducting hearings on the Ontario Training and Adjustment Board Act which received royal assent last month. We recommended that the committee amend subsection 9(2) to include a director for youth on OTAB. Though our amendment was not adopted, honourable members on all sides of the committee and this House began to ask why young people were not represented by the political institutions that shape our daily lives.

Most recently, this past July 15, Moffatt Makuto, the regional consultant of MANWO-RMYC, and myself attended the briefing hosted by the Honourable Dave Cooke, the Minister of Education and Training, on his ministry's anti-racism, access and equity initiatives. We later had the opportunity to speak with both the minister and his deputy, Mr Charles Pascal, to inform them of the preliminary results of our own recent survey that examined the employment, job training and education aspirations of young people in northwestern Ontario. I also congratulated them and the Honourable Elaine Ziemba for the new initiatives to incorporate anti-racism in education and for the appointment of Manisha Bharti to the Royal Commission on Learning. This appointment proves that this government recognizes that reform to education is not possible without hearing the views of young people who are as much stakeholders in the system as teachers, administrators, school board trustees and parents.

Now we are participating in the employment equity legislation. We have examined both Bill 79 and the recently released draft regulations. Both MANWO and the RMYC wish to extend support for this legislation. It is our belief that this legislation will be a stepping stone in creating both a more diverse and dedicated workforce in Ontario's public and private sector. Those who imply that this act will force employers to hire unqualified individuals suggests that they have put forth little effort in understanding, let alone reading, this legislation.

For argument's sake, if 40% of engineering graduates are women, yet only 5% of these graduates are employed as engineers, one has to be provoked to ask why this underrepresentation exists. Yes, economic times are tough, but it still doesn't address the question of underrepresentation which exists under all economic conditions, good and bad. This underrepresentation is a result of both intentional and systemic discrimination. As long as stakeholders have the power to structure and implement equity plans relevant to the needs of their



workplace, then the intent of this act will have been realized.

Honourable members who have read the guide to the draft regulation will know that the letter and spirit of this act are being tested by five companies. This will ensure any flaws found within the letter or spirit of the act will be nipped in the bud and corrected. Great care will be taken to ensure the plan works for all parties involved. The guide clearly states:

"Employment equity cannot change things overnight. There would be little point, for instance, in an employer setting a goal of women filling half of the company's chemical engineer positions when the proportion of women working in that field, or with the necessary skills, or currently in engineering schools, is much lower."

A thorough reading of the legislation and regulation should put to rest any fears that this measure will deny qualified individuals the right to participate and productively contribute in the workplace and in Ontario's social and economic wellbeing.

In the spirit of ensuring that this legislation works for all concerned, I direct your attention to an excerpt from last year's Employment Equity Commissioner's report, entitled *Opening Doors*:

"Young people were themselves active participants in the consultations, and they were frequently mentioned by other participants.... Parents, teachers, employers and unions all noted the importance of involving youth at an early age in understanding, accepting and promoting employment equity. Young people clearly experience more difficulties in finding jobs than other participants.... In spite of their current difficulties, young people are enthusiastic about contributing and building a just society. They want opportunities to fulfil their potential and show what they can do. They, more than any other group, will be looking to the results of employment equity legislation to see the kind of future they will face in Ontario."

According to the guide to the draft regulation, any employment equity plan will be targeted towards "the working age population of a specific geographical area." Given that Statistics Canada defines the "working age population" as those persons 15 years of age and over, this legislation will have a direct effect on young people and if all bodes well, young people will have an opportunity to help determine the direction of their workplace.

But in order for this goal to be realized, workers will have to be represented by the institution that serves their daily needs. The following three amendments we are proposing relate to the principles of this act and the structure and function of the Employment Equity Commission. We believe the following should be added to section 2 of the act:

"Given that this act will affect aboriginal people, people with disabilities, members of racial minorities and women in the working-age population and that their progress has been impaired by barriers, both systemic and intentional, it shall be recognized equity must take root at the earliest possible age."

Our other two amendments are directed towards the Employment Equity Commission. The first addresses the Employment Equity Commission's structure. Juanita Westmoreland-Traoré has done an admirable job as Ontario's first Employment Equity Commissioner. However, a single commissioner, no matter how effective, is not a commission.

Subsection 40(2) of the act reads as follows: "The commission is composed of one or more members to be appointed by the Lieutenant Governor in Council." The above could imply that the Lieutenant Governor in Council could appoint a commission consisting of only one individual.

Given that subsection 40(3) provides for an Employment Equity Commissioner, the previous clause should be reserved to appoint commissioners that reflect Ontario's working-age population. We propose that subsection 40(2) be struck out and substituted to read:

"The commission shall be composed of at least three members to be appointed by the Lieutenant Governor in Council, representing the following groups:

"One commissioner representing women.

"One commissioner representing racial minorities.

"One commissioner representing people with disabilities.

"One of the commissioners mentioned above shall be a person between the ages of 15 to 24.

"One commissioner representing aboriginal people shall be appointed subject to the consultation and approval of the aboriginal community."

Our final recommendation addresses the function of the Employment Equity Commission. Structural amendments to an act are incomplete without amendments to its functional provisions. The seven duties listed under subsection 41(1) serve little purpose, unless representing the people you serve is recognized as as much of a function as serving the people. We propose the following be added to subsection 41(1):

"To represent and serve aboriginal peoples, persons with disabilities, racial minorities and women in the working-age population with the intent to address issues and come to solutions in a cooperative and consensual manner."

Whether honourable members agree or disagree with these particular amendments, it is our hope that you will recognize that equity needs to take root at the earliest possible age and that this principle take root by representing young people in the political institutions that

represent interests so vital to our very wellbeing. If you acknowledge this principle, it is up to you to begin the process of putting it into practice.

Thank you for allowing me this opportunity to speak before you this afternoon on an issue which means a great deal to RMYC-MANWO, as well as myself personally. I welcome any and all questions members may have for me in the time remaining. Thank you.

**The Chair:** Thank you. Official opposition members, seven minutes.

**Mr Curling:** Thank you very much. I think it's a well-thought-out presentation. You seem to have put a lot of work in it. Of course, maybe you're there from the beginning and you seem to have some guidance in what came forward here. I think that the commissioner, with her comments, seemed to have listened to the youth presentation and their contribution.

1610

Could I ask, then—I know you've given this quite a lot of thought—the seniority clause within the legislation, do you feel it would have impeded young people coming up through the ranks at all? Do you think it has any impediments at all conflicting with the purpose of the employment equity plan?

**Mr Goldstein:** I don't see why it should, but that's not the point of my presentation. I think whether you strengthen the seniority clause or weaken it, I don't think it's relevant to addressing the needs of young people with respect to being represented by the political institutions that serve the daily needs.

One of the reasons I decided—or should I say the organization—to put forth its second amendment—if you look at subsection 45(3), when the commission appoints an advisory committee, there have to be representatives from the employees, the employers and the designated groups. You don't see that in the structure of the Employment Equity Commission. That's more or less my main premise. But the question regarding seniority rights, I don't think it matters one way or the other.

**Mr Curling:** You don't think at all it conflicts with the—

**Mr Goldstein:** Not at all.

**Mr Tilson:** Thank you, sir, for coming to us this afternoon. The emphasis seems to be on the youth, that you feel youth should play a larger role in this whole process. Looking at you, I understand why you're taking that position. However, there have been remarks made by individuals, particularly seniors, who feel that they have been discriminated against because of lack of training, keeping up with the times, whatever. In other words, as you reach a certain age, you're finished. What about them? Why are you emphasizing youth and not looking at senior groups?

**Mr Goldstein:** You can make the same argument of

the senior citizens' group: Why are they emphasizing themselves and not the youth groups? We are pursuing our own interests and we have nothing against the senior citizens' groups pursuing their own interests. If they want to be included in the text of this act, we're behind them 110% and more power to them.

**Mr Tilson:** I guess that's great, although when do we stop? Pretty soon we're going to have a pretty big commission; we're going to have a pretty big group. How far will we go?

**Mr Goldstein:** As far as we possibly need to go. This question was asked of me when I appeared before the standing committee on resources development last January. It was a Liberal member, Dalton McGuinty, asking me much the same question when our organization was lobbying for youth representation on the Ontario Training and Adjustment Board. We may have to go as far as we need to go. The point is, whether you're talking about young people, whether you're talking about people over the age of 65, it's a considerable percentage of the population and it seems mysterious to them not being directly represented in some way on the government structures that affect their daily lives, in this particular case, the Employment Equity Commission.

**Mr Tilson:** Looking at your recommendation—I'm not too sure what the number is; at page 3 there's a recommendation. You're asking that a certain subsection be added as section 2. The last three words, you refer to the "earliest possible age." What does that mean?

**Mr Goldstein:** The earliest possible age—I'm referring more or less specifically to the definition of working-age population which, as I said in the presentation, according to Statistics Canada, is from 15 years of age and upwards. Obviously, young people enter institutions well before that. Our educational institutions, young people enter at the age of four and five. But this being somewhat directly or indirectly labour legislation and applying to the workforce, the earliest possible age would be about 15.

**Mr Tilson:** Which leads me to my next question. There's been much controversy for and against the merit principle. I'd like to hear your thoughts either for or against that. I guess the most important question about numerical goals and timetables is whether they are consistent with the merit principle. If barriers to employment are removed, then I suppose members of the disadvantaged groups should be able to be subjected to the competitive process and hence be hired only on the basis of merit. That is one view. There are other views that say no.

Would you tell me what your thoughts are from your perspective, of the youth in particular, as to whether the merit principle should be mentioned in Bill 79? As you know, Bill 79 makes no mention of job qualifications and does not expressly preserve the employer's right to



hire the best-qualified candidate.

**Mr Goldstein:** Well, my comment to that is that you can't create nothing out of nothing. I think this legislation is intended to include qualified people who for whatever reason have not been included in the past. I'm not necessarily saying that you're making the assumption, but there are people who believe all this legislation is licence to hire unqualified people.

But even if you do hire people who are so-called unqualified, it's one thing to be hired, but it's another thing to hold on to a job too. You do have to perform with some degree of competency.

**Mr Tilson:** Oh, that's not what this bill says, necessarily. If what you're saying is correct, that I have misunderstood the bill, that the merit principle is not within the bill, just to remove any doubts, would you have any problems with a provision being put in the bill by way of an amendment that would include the merit principle?

**Mr Goldstein:** If an employee is not performing adequately at his or her particular job, I don't see how this legislation is going to stop an employer from dealing with that particular employee.

**Mr Tilson:** You look at subsection 50(2)—

**The Chair:** Last question, Mr Tilson.

**Mr Tilson:** —which refers to regulations, the authority for the government, by way of regulations, to put forward percentages and essentially quotas. That doesn't necessarily agree with what you've just said. In other words, the commission could therefore say there needs to be a certain percentage of whatever groups in a particular—

**Mr Goldstein:** But you're not going to be creating nothing out of nothing. You perhaps missed the point of my own brief. What I said was if, for argument's sake, 40% of engineering graduates were women and only 5% of those working engineers were women, clearly there was a problem. But since that number to my knowledge doesn't exist, there would be no point in creating such a quota, as you put it. So I think your fears are ungrounded.

**Mr Fletcher:** Thank you for your presentation. It's nice to have your opinions. Did you come all the way from Thunder Bay for this?

**Mr Goldstein:** Yes, I did. I flew here this morning and I'm flying back as soon as I get out of here.

**Mr Fletcher:** We wanted to travel to Thunder Bay. We wanted to travel throughout the province but the opposition said, "No, we don't want to travel; we want to do this in Toronto."

I know there are a lot of groups in Thunder Bay and a lot of groups in northern Ontario that this is going to affect. I think we should have been there. The minister is going to be in Thunder Bay tomorrow, I believe.

**Mr Goldstein:** On Saturday.

**Mr Fletcher:** On Saturday? Okay. And so you'll get some firsthand information from the minister.

**Mr Curling:** But she won't be here.

**Mr Fletcher:** Some of the things I'm hearing from you are things I've heard from other young people.

*Interjections.*

**The Chair:** Continue.

**Mr Fletcher:** I agree with you wholeheartedly.

**Mr Goldstein:** Excuse me. I can't hear what the member is saying. I wish members would refrain—

**Mr Fletcher:** It's the opposition again.

**The Chair:** There, the Chair has spoken.

**Mr Fletcher:** What I'm saying is that a lot of people who are coming out of school go for a job and then, "You don't have the experience," you know, that's the first thing.

The second thing is, "Well, you know, come back in a few more years." That is a barrier regardless. I think at some point in time employers are going to have to look at it and say: "Well, maybe you don't have the experience, but we can give you the experience. We can train you." Perhaps that's another way of getting around some of the systemic discrimination that goes on as far as young people are concerned. I don't know if that can be worked into it or not but is that something—

**Mr Goldstein:** I was born in 1972. I'll be 21 years old in a couple of months. I am part of generation X. I think one of the recurring themes of generation X is that we're the first fired and last hired, but I think given that economic times are tough and an alternative—the organization I belong to has helped me tremendously in the skills that I've acquired over the last four or five years in terms of volunteering, in terms of summer employment and what not. Young people do have a degree of responsibility in seeking it out, or the organization seeking them out in turn, to develop these skills. But I think employers have to also play a role in that, perhaps cooperatively with organizations such as my own.

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**Mr Fletcher:** I agree wholeheartedly with your—

**The Chair:** Mr Fletcher, without intending to interrupt you, there are two other speakers who would like to speak, just as a reminder.

**Mr Fletcher:** Yes, I know.

I agree with you wholeheartedly on the fact that the commission should be made up of the groups it represents; it should reflect those groups. I agree wholeheartedly. I think that's a very good point. I think it's a point we will be discussing wholeheartedly. I think that's great.

As far as the merit system is concerned and the bunk

that goes on about it, there is nothing in this legislation that says you can't be hired because of whatever. There is absolutely nothing that does away with merit or that does away with a person who can do the job. There's absolutely nothing in the legislation that says that, and I can't for the life of me understand why anyone would go around saying something like that. It's to get it on the record, I guess. It's politics, obviously. But that is not part of the bill and the bill does not go into that depth of saying you cannot hire anyone you wish to hire. It doesn't limit that.

**Mr Goldstein:** I think there has been a certain climate of fear created by some interests that are opposed to this particular legislation, and to some degree they have been articulated by the opposition members, not necessarily to the degree that the organizations opposing this legislation would go to, but that's one of the reasons our organization is here, to combat some of the myths that have come out. The myths that have come out have been quite frankly scary, and organizations like our own have a responsibility not only to ourselves but to the public to say no, this isn't the case at all.

**Mr Fletcher:** Right. Thank you.

**The Chair:** Ms Harrington, one last question.

**Ms Harrington:** I'd like to follow up on that. I notice that you are in fact a young, white, able-bodied male, and there was one other young, white, able-bodied male who a few days ago presented before our committee. I believe he was 21, much like you but in fact quite different. He felt that the legislation would take opportunities away from him, that it would hurt him in some way. Have you met other young people, white males like this?

**Mr Goldstein:** Certainly.

**Ms Harrington:** What do you say to them?

**Mr Goldstein:** Well, assuming that they're willing to listen to me, I tell them first of all to read the legislation. I would say more than 95% of the people I encounter who say this thing is going to be added, the first thing I ask them is: "Did you read the legislation? Have you read anything about this?" Nine times out of ten they say no and I say: "Well, where do you get off saying that? It's basically an uninformed opinion."

If someone reads the legislation, reads the regulation—I realize it's not the easiest thing in the world to read—but if somebody makes a legitimate, conscientious effort to read the legislation, the regulation or anything else he can get his hands on and he does come to the conclusion that this legislation is not in his best interests, at least I'll be able to respect that individual's opinion, and then it depends on the tone of the argument at that point.

**Ms Harrington:** So in effect as a young person of 21, this legislation is not closing any doors to you?

**Mr Goldstein:** Not at all.

**The Chair:** Mr Goldstein, thanks for coming from northwestern Ontario to participate in these hearings.

**Mr Goldstein:** My pleasure.

#### SOUTH ASIAN WOMEN'S CENTRE

**The Chair:** The South Asian Women's Centre is the final deputant for the day. Ms Sharmini Fernando, you have approximately half an hour for this presentation.

**Ms Sharmini Fernando:** I don't think I'll need the whole half-hour, but thanks.

**The Chair:** That will leave time for questions and answers, obviously. Very well.

**Ms Fernando:** This is the South Asian Women's Centre and my name is Sharmini Fernando. I'm the executive director of the centre. I was just called an hour ago to be here. I was on the waiting list and I felt I wouldn't have a chance to get on, but somebody called me from this office and told me to come on down so here I am.

I've been involved with pushing for this bill and this legislation for I would say about five years. Unfortunately, my familiarity with all the legalese is negligible. I know it from a human perspective as opposed to a legalese perspective, so I hope the questions you ask me will not pertain to any of the legalese that belongs to the act and that belongs to the regulation and legislation. With that, I'll talk about what I have to say.

Somebody is passing around a little bit of information about the centre. The South Asian Women's Centre is a non-profit, ethnospecific women's organization run by and for South Asian women and operates on a community development model. The centre is a member-run and member-focused space where South Asian women of all backgrounds and ages can avail themselves of a number of programs and services. So that's generally who we are.

Because of who we are, visible minority women, the employment equity legislation is of paramount importance to us. Equity legislation and human rights legislation is one of the few institutional tools we have to fight age-old inequities. It is imperative for us that this legislation is strong and inclusive. We do not want the disappointment we felt, when the pay equity legislation was passed, to repeat itself. For a large proportion of visible minority women who are employed in small, unorganized workplaces, this legislation means very little. They rarely see equity and we rarely see equity. This must change if Ontario is to truly become a place of harmony.

Visible minority women, persons with disabilities, first nations people, racial minorities, gays and lesbians are systematically and consistently excluded from fully participating in Canadian society. This systemic discrimination must be stopped and stopped now. If you turn your back on this opportunity, the consequences for



Canada and all Canadians will be severe.

Bill 79 is a simple, human legislation, and it's simple for me because all it asks is that employees and employers engage in a process of planning to get rid of barriers that keep these designated groups from full participation in the workplace. The right to work and the right to be recognized and remunerated for our work is a basic human right. We support the legislation wholeheartedly.

Unfortunately, the methods set out in Bill 79 and the regulations which govern the act are so watered down that the effect of the bill becomes questionable, at least to us. A law that has weak enforcement power is, in our opinion, an exercise in futility and mere window dressing. In order for employment equity to work and have some impact, Bill 79 needs to change.

All principal mechanisms, and I'm just going to talk a little bit about—are you Rosario Marchese?

**The Chair:** Yes.

**Ms Fernando:** Oh, I'm sorry; I don't have my glasses on. I remember you from a long time ago.

**The Chair:** Yes. Please continue.

**Ms Fernando:** In order for employment equity to work and have some impact, Bill 79 needs to change. All principal mechanisms for steering and enacting employment equity must be in the bill, not in the regulations, especially numerical timetables and employment systems review.

Coverage of all Ontario workplaces: It's unfortunate that the Employment Equity Act, as it's drafted, already excludes a great number of workplaces in Ontario. Public workplaces with fewer than 10 employees and private sector workplaces with fewer than 50 employees are not covered by the act at all. These employers account for one quarter of all employment in our province.

A lot of us who are new immigrants, who are visible minorities, tend to find work in small spaces and we don't get represented in huge corporations like IBM and other conglomerates. Places that are small are more accessible to us, and having these workplaces excluded from the act is a real problem for us.

1630

Third-party access to information on complaints on behalf of vulnerable individuals and groups and recognition of needs to end discrimination against lesbians and gay men refer to all opportunities for change, not just entry. Clear protection for collective agreements which do not breach the act; restrictions of commission officers' interventions into matters in dispute etc; guarantees for participation by representative employees in non-unionized workplaces without fear of reprisal; standards of reasonable progress towards representativity of the workforce; input from designated group members and their advocates in developing the commission and

its policies; no loss of rights under the Human Rights Code for individuals subject to employment equity plans on discrimination complaints; and consistent and effective language on positive measures which apply to everyone. According to what we see, the bill uses sort of different language than that in the regulations, so to have consistent language.

That's it for me. Any questions? I'll try and answer them.

**The Chair:** We'll begin that. Mr Tilson, seven minutes or so.

**Ms Fernando:** Could you not make the questions too hard?

**Mr Tilson:** No, they'll be easy. I'm told by the government members that my questions are all very easy.

My question to you is that there are statistics out that say that by the year 2003, 80% of the workforce will come from the four designated groups.

**Ms Fernando:** Yes.

**Mr Tilson:** My question is, is employment equity inevitable?

**Ms Fernando:** No, I don't think so, because I think most of us will end up working in McDonald's or someplace. Most of us will end up working in the service sector. We'll be part-time workers, low pay, minimum wage, less than minimum wage, contract etc. So I don't think employment equity is at all inevitable. In fact I could see the designated groups sort of almost ghettoized by the year 2000.

**Mr Tilson:** You may be right. I guess one does have to look at statistics. We have to have some basis as to why we do things, and statistics are saying that. I mean, lots happened in the last 20 years. First of all, our population is changing tremendously. Our education philosophy is changing tremendously. We have become more and more of a cosmopolitan society, particularly in southern Ontario.

**Ms Fernando:** Cosmopolitan doesn't necessarily mean harmonious or equal, does it? At least I don't think so anyway.

**Mr Tilson:** I quite agree, and of course we've heard examples of discrimination with respect to language, with respect to age, with respect to youth—

**Ms Fernando:** Definitely, yes.

**Mr Tilson:** —the last person, who's still here, with respect to youth—and on it goes. But I guess, looking at this specific bill, one does have to look at that as to what we're trying to accomplish and what will happen in the year 2003 if that is the case. Do we change it again, or what do we do then?

**Ms Fernando:** I think employment equity prepares us for the year 2000. It should lay the foundation and create a path so that we can get to the year 2000. I

think that this type of legislation shouldn't be considered as legislation that's written in stone and cannot change as statistics change or values change. Legislation, for it to be truly equal and truly applicable, should be a mutable thing, to change as people's values, needs and desires change.

As far as your question, a point of clarification: Are you saying that employment equity is inevitable because by the year 2003 we're going to have all these people who belong to the designated groups in Ontario, or—

**Mr Tilson:** I'm not saying that. That was my question to you. What I'm looking at is statistics that are coming out, and there is a recent study prepared for the Canadian Advertising Foundation which says that by the year 2001, 44.6% of the Metro area's population will be a visible minority. Then there's a Carleton University professor by the name of Samuel, John Samuel, who states that:

"There is evidence to indicate that, for most Canadian-born visible minority groups, the level of income is higher...than that of the white population. The children of visible minority immigrants, except for one or two groups, are doing much better than the general population."

Then he goes on to say that, "According to the 1986 census...when the general population had an annual income of \$17,453, visible minorities had an income of \$18,908 or 9% higher," and then he goes on.

I guess the point of my question is that the makeup of our population, particularly in the Metro area and particularly in southern Ontario, is rapidly changing. Are we specifically looking at the reports that the minister prepared, which are already out of date and have changed? A lot has happened since the reports she's relied on. I guess that was the purpose of my question.

**Ms Fernando:** I guess people can find statistics for almost everything.

**Mr Tilson:** You're quite right.

**Ms Fernando:** I know that—you're right. But, I mean—

**Mr Perruzza:** You can get statistics too.

**The Chair:** Mr Perruzza, please let the deputant speak. Continue, please.

**Ms Fernando:** I'm sure that partially the statistics are correct, and again, I'm not a researcher so I don't really know, but my experience and my reality is that I don't think employment equity is just going to happen just because there are going to be more brown faces or because more lesbians and gays come out of the closet or because more people with disabilities are asking for their rights. History hasn't proven that. You as lawmakers and you as people in positions of power must look at history, I think, and look at what history has proven time and time again, that if there is no

proactive methodology in place, there's not going to be any equality. There's not.

I think that what I hope for and what I hope for Canada and what I hope to happen when my children are born is that Ontario and Canada become a space that's truly inclusive, that we wouldn't have to fight for every little thing, that we can walk in, if we have the qualifications, to any workplace, present our qualifications, go through that interview process and be considered. That's all we ask for.

**Ms Carter:** It just occurs to me that women of course have always been half or more of the population and I believe in North America now women on the average are better educated than men, but that didn't solve the problem by itself, did it?

**Ms Fernando:** No, it didn't.

**Ms Carter:** So I absolutely agree with what you're saying. And, you know, we've been hearing a lot from the opposition members here and elsewhere—

**Mr Perruzza:** Sometimes too much. It gets very confusing.

**Ms Carter:** —about having employment equity would somehow militate against employers having qualified staff, that if you have employment equity you don't have merit, you don't have hiring on merit. Of course what the bill actually says is that employers must take into account members of designated groups who have the necessary skills, and if they didn't have the necessary skills, then they would not be taken into account, and rightly not. It seems to me that the regulations enforce the merit principle, so I'd like to ask our presenter, what do you think of people who are saying that employment equity undermines merit and will require employers to hire unqualified staff?

**Ms Fernando:** Well, Jenny, I can't really understand your question, because I can't believe—

**Mr Perruzza:** It's okay, Elinor, you can leave. You haven't been here most of the day anyway.

**Mrs Caplan:** That's nonsense.

**Ms Fernando:** Is this really what happens here, like, you guys cross-talk all the time? My God, this is worse than North York city council.

**The Chair:** Ms Fernando, did you understand the question and hear it? I'm sorry.

**Ms Fernando:** I couldn't really get the gist of it because there was so much of this stuff going back and forth.

**The Chair:** Ms Carter, again.

**Ms Carter:** Basically I'm saying, what do you think about people who say that having employment equity will mean that unqualified people will have to be hired?

1640

**Ms Fernando:** Isn't that something, eh?

**Ms Carter:** It is something, yes. I'm just wondering



what you think about it.

**Ms Fernando:** Do you know what? It's interesting how from the beginning—I got involved around issues of employment equity when I started to work as a community worker and I was 20 then. I'm 32, and the push for employment equity is older than my entire work life. I mean, I remember working with Rosario when he was just working for the Toronto board of ed and we were organizing around streaming and equity in the schools.

This kind of stuff keeps happening over and over and over again, and I just love the way this sort of subversiveness happens when a community, and communities, all communities, try to move the human condition forward, because for me employment equity is about improving the human condition, our condition as a community, as a society, as a collective of human beings wanting the right to work and wanting the right to be recognized. I mean, I think that is a collective human need, and to subvert that need by using these kinds of drivel around, you know, somebody "gets off the boat," walks into the Ontario government and she happens to be sitting in a wheelchair wearing a pink triangle and she's going to get the job: That is such crap. It's unbelievable that people in 1993 still believe that, that that could happen. I don't get it. Even a 10-year-old wouldn't believe that. Yet the Toronto Star, the Toronto Sun, the Globe and Mail and all the other dailies and so-called journalists keep promoting this and pushing this, and I couldn't believe it. To me, it's unbelievable.

That is not what employment equity is all about. It was never what employment equity was all about. All employment equity wants is for people with equal qualifications to be equally considered, and that's it.

**Ms Carter:** Absolutely.

**The Chair:** We have time for one more question. Mr Fletcher was on the list.

**Mr Fletcher:** Go ahead, Jenny, if you have something else.

**Ms Carter:** I just wanted to say that there does seem to be confusion between employment equity as such and education and training. I think this was very clear in a group we had earlier—I think it was the South Africans—who were saying yes, there was an educational disadvantage in that they didn't get treated right at school, and obviously that's something that has to be looked at.

**Ms Fernando:** That's right. Of course. Exactly.

**Ms Carter:** On the other hand, if they succeed educationally and are perfectly well qualified, they can then go and apply for a job and not get it because of who they are. So we really have two separate issues here, and obviously the educational issue has to be dealt with, but that is not the same thing as job equity.

**Ms Fernando:** Not at all, but it's part and parcel of the whole systemic inequity, because you start out right from day one being unequal and being unequally treated. You have to look at the whole thing. You have to be holistic about it, and I think that politicians and other lawmakers tend to cut things up in such minute pieces that you can't see the God-damned forest for the trees. Excuse my language. I think that that can't happen any more.

**Ms Carter:** You see education and training as separate from employment equity.

**Ms Fernando:** I think that it's a part of the whole picture.

**Ms Carter:** Of the bigger picture.

**Ms Fernando:** Yes, of the bigger picture, but employment equity and educational streaming and education and training are different and obviously will be treated differently.

**Mr Murphy:** Thank you very much for your presentation. I thought that your statement in response to one of the questions, I believe Ms Carter's, was entirely appropriate, that the objective of employment equity is that people can go into a job setting regardless of background, gender, race, visible minority, cultural minority, aboriginal background, whatever, and be considered on the basis of equal qualifications equally for that job. I think as an objective of employment equity there is no one who can disagree with that, and I frankly think that as a fundamental statement of principle that deserves the first and foremost place in the preamble of this bill. One of the things we're trying to do is say that that's exactly what we're trying to achieve, and we'd like to see that in the bill because I think that's fundamental to what we're trying to do and that's the goal.

**Mr Perruzza:** You should get past the political statement and suggest alternatives.

**Mr Murphy:** I just suggested one, but I'd appreciate your not interrupting, Mr Perruzza, as you have been all day.

**The Chair:** Continue, Mr Murphy, please.

**Mr Murphy:** I do want to ask you about your organization specifically. You may not even know the answer. We're trying to talk to some of the officials in the ministry. Do you know whether this bill would apply to your organization?

**Ms Fernando:** In what way?

**Mr Murphy:** As in, would you be required to go through the process of the bill?

**Ms Fernando:** No, we won't be, because we employ the designated groups, visible minority women, women with—is that what you mean?

**Mr Murphy:** No, I meant, regardless of whether or not you meet the targets of employment equity, you

have to go through the process, and you may at the end say that, "Not only are we meeting the targets, we're past the targets." The question is—because it applies to the broader public sector if you have more than 10 employees. I'm just wondering whether you know whether it applies to you.

**Ms Fernando:** We only have four people working there.

**Mr Murphy:** So it would not have to apply to you.

**Ms Fernando:** No.

**Mr Murphy:** You wouldn't have any problem going through the process of doing that, I would assume.

**Ms Fernando:** No.

**Mr Murphy:** I'm wondering; one of the things that was raised earlier by a Bangladeshi group was the issue of cultural minorities and linguistic minorities. I notice there's quite a range of languages that you speak. One of the issues is how the groupings within, for example, visible minority focuses primarily, obviously, on the visible characteristic of the individual. One of the concerns was raised about how do you deal within that, within not just different linguistic and cultural backgrounds and how you deal with that sensitivity. Have you given some thought to that?

**Ms Fernando:** You know what, Tim? "Visible minority" is not a term we gave ourselves; "visible minority" is a term that was given to us by you guys—"you guys" meaning the powers that be. Not you personally, Alvin.

**Mr Tilson:** It's your fault, Alvin.

**Mr Curling:** I was visible for a long time.

**Ms Fernando:** So when women come into our centre, we don't ask them: "What part of the subcontinent are you from? Do you come from East Africa?" We don't. Those questions are irrelevant to our organization. We were formed because there was no space for us. "Us" means people who basically are from the subcontinent, from the South Asian diaspora. We have women who come from Algeria, from Tibet, from Turkey, through our centre. So even though we are a South Asian women's centre and as such one of the few ethnospecific—and that's another term we didn't invent for ourselves—services available to women, we don't discriminate. Our English-as-a-second-language teacher is a wonderful teacher who is originally from Italy. She's Italian. We have her because she believes in Pala Fererra and she uses that technology and that methodology when she teaches our students.

So again, the space is for South Asian women, run by South Asian women. South Asia is not a monolithic entity. The South Asians are not monolithic and we're from everywhere. So in that way, we're not limited at all to who we serve and who we're—

**Mr Murphy:** My question wasn't directed to your

agency so much as how it would work out in the context of this bill and whether you have recommendations about—the term within the bill is fairly specific, yet it encompasses a wide range of differential. I'm wondering if you have any suggestions of how to deal with the fact that there is that range within that definition.

**Ms Fernando:** That's a hard question, because I don't know how lawyers and lawmakers create these really strict little boxes, that everybody has to sort of fit into this tiny little hole. I haven't really studied the legalese in the legislation to give you the kind of answer you deserve, so I have to pass on that. I can't tell you.

1650

**Mr Murphy:** That's fair. One other, if I may.

**The Chair:** Very quickly.

**Mr Murphy:** You talked a couple of times about the issue of gays and lesbians and equality for them. I assume you've looked through the bill and, as you well know, gays and lesbians are not a designated group in this bill. Neither, for example, is the francophone community, which we've obviously heard from. I wonder whether you, as a member of one of the designated groups, would have any problem with the expansion of that to francophones or gays and lesbians.

**Ms Fernando:** Obviously not, because I talked about gays and lesbians in my deputation. I didn't talk about francophones, but I think language minorities need to be recognized. The people who came together to put employment equity together were the people who were hurting the most, and they were people with disabilities, visible minorities, women. They came together a long time ago to work on this thing because they were the ones who were being most badly damaged and hurt.

As most movements—employment equity, pay equity and those equity types of movements, they're movements. They opened up and people started saying: "Well, hey, what about gays and lesbians? Hey, what about francophones? Aren't we a part of this too?" In real terms, they are; we are. Everybody who has been unequally treated should be represented in equity legislation. I personally have no problems expanding the legislation to include excluded minority or discriminated groups in the legislation.

**The Chair:** Mr Curling, would you like an opportunity to ask another question?

**Mr Curling:** I would love an opportunity to ask a question. She articulates her response so well. I could learn a lot in the process. You are familiar with the report of the Task Force on Access to Professions and Trades, and as you spoke you said that all people want to do is to be treated fairly if they have the qualifications. I want to speak of those who have the qualifications but have been denied because of professional



organizations and associations. First, it's been recognized. Once the recommendation which lies in that report is implemented, it releases a tremendous amount of qualified people into the workplace, because they use that as an excuse, "You're not qualified; no Canadian experience," etc.

Do you think that should be implemented immediately so that, as you said, your children and maybe you yourself would have access immediately to this? The government has promised that: "Well, we've started on what we'll do. We've set up a pilot project on this." I cannot understand what the pilot is; like a satellite, the project could be orbiting on Saturday. Do you feel this would be extremely important now, to implement the recommendations of the report of the Task Force on Access to Professions and Trades?

**Ms Fernando:** Is that a trick question?

**Mr Curling:** No.

**Ms Fernando:** If I say yes, then would employment equity be shelved?

**Mr Curling:** No. I think that employment equity is extremely—

**The Chair:** That forces Mr Curling to ask yet another question.

**Mr Curling:** Employment equity is necessary and it should be implemented.

**Ms Fernando:** Right.

**Mr Curling:** I believe in it strongly. I think setting it out there on its own without the supportive things that studies and studies have proved where to move—I'm just saying that here is a helpful way in which, if they release all those qualified people, there is far less excuse.

**Ms Fernando:** To me, that is a trick question.

**Mr Curling:** No.

**Ms Fernando:** You know why it's a trick question? Because when I look at people who come to this country who are already qualified—I think the report should get equal consideration, by the way, and it

should have some kind of consideration in the legislation. We have to be careful about this. I haven't really quite formulated my whole answer, so I might be a little fuzzy here, but when I think of lawyers and doctors and engineers and all these people who come from other countries to Canada and they're not allowed to practise their profession, I think that's a sin. I think it's a sad thing when a doctor or an engineer or somebody who spent all this time, energy and money doing something, having to immigrate because of war or because of famine or because of some other human-made disaster in the world to this country because this country seems more stable, then has to clean floors. What is that? To me, that's worse than sad; that's a sin. That's an ethical, moral sin.

At the same time, we need to look at issues of class and class privilege. When we look at a person who's a doctor in Somalia coming here, this person who's a doctor should get considered here as a doctor, but then there are people here who are Portuguese kids or black kids or Indian kids who are not even being given the opportunity to study to be a doctor because of their race or because of their class. Do you know what I'm saying?

So we need to have equity in education, employment equity, this kind of legislation in place simultaneously with this kind of stuff, the report that was written around trades and accessibility to trades and professions. They have to be looked at together. To say that this should be looked at and given more precedence over something else would, I think, again be cutting our nose to spite our face kind of thing.

**The Chair:** We've run out of time, Sharmini. I thank you for coming on short notice and to congratulate you on a very thoughtful and lively presentation.

**Ms Fernando:** Thank you.

**The Chair:** This meeting is adjourned and will resume August 23 at 10 o'clock.

The committee adjourned at 1656.











*Continued from overleaf*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

\***Chair / Président:** Marchese, Rosario (Fort York ND)

\***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

Akande, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

\*Curling, Alvin (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

Malkowski, Gary (York East/-Est ND)

Mills, Gordon (Durham East/-Est ND)

\*Murphy, Tim (St George-St David L)

\*Tilson, David (Dufferin-Peel PC)

\*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Caplan, Elinor (Oriole L) for Mr Chiarelli

Carter, Jenny (Peterborough ND) for Mr Malkowski

Fletcher, Derek (Guelph ND) for Mr Duignan

Frankford, Robert (Scarborough East/-Est ND) for Ms Akande

Perruzza, Anthony (Downsview ND) for Mr Mills

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

**Clerk / Greffière:** Freedman, Lisa

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

### **Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service

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## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 23 August 1993

Standing committee on  
administration of justice

Employment Equity Act, 1993

# Journal des débats (Hansard)

Lundi 23 août 1993

Comité permanent de  
l'administration de la justice

Loi de 1993 sur l'équité  
en matière d'emploi



Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 23 August 1993

The committee met at 1000 in room 151.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. Given that we have plenty of members, we can begin.

STELCO INC  
JANNOCK LTD  
HUDSON'S BAY CO  
EMCO LTD  
NORANDA INC

**The Chair:** I'd like to welcome the delegation from Stelco. Perhaps, Ms Stewart, you can introduce everybody else. You have half an hour for your presentation. You may decide to take 15, possibly longer, and allow four or five minutes for each caucus to ask questions.

**Ms Sandra Stewart:** Fine. First of all, I'd like to make one point of clarification. I understand the notice didn't necessarily get received on Friday. This is not a Stelco delegation exclusively. There are five organizations represented here today, so I will start and then I'll ask my colleagues to introduce themselves.

My name is Sandra Stewart and I'm here on behalf of Stelco.

**Mr Ken Hughes:** I'm Ken Hughes and I'm here on behalf of Noranda Inc.

**Mr Walter LeGrow:** I'm Walt LeGrow and I'm here on behalf of Emco Ltd.

**Mr Dale Kerry:** I'm Dale Kerry and I'm here on behalf of Jannock Ltd.

**Mr David Crisp:** I'm Dave Crisp, here on behalf of Hudson's Bay Co.

**Ms Stewart:** We're going to share in the presentations this morning. I'll begin.

Basically, our five organizations represent a total of 207 separate businesses or workplaces across the province.

Stelco, for example, has eight different business units in the steel industry, including some secondary manufacturing facilities in the wire, pipe and fastener businesses.

Hudson's Bay Co represents 30 Bay stores and 110 Zellers stores.

Jannock represents 20 business units in three different industries, specifically printing, vinyl manufacturing and brick-making industries.

Emco represents seven manufacturing businesses in two different industries. It also represents 15 distribution centres across the province.

Noranda Inc represents 17 businesses or workplaces in the mining, forestry, manufacturing and oil and gas industries.

In total, our 207 businesses employ over 45,000 employees.

We support the overall concept of equity in the workplace and we're not here to argue the principles of equity or employment equity specifically. Rather, we're here to talk to you about several operational concerns that we have associated with the bill, and we may make some references to the regulations as well.

Specifically, we have four concerns. Three of them are all very similar in that they essentially relate to the definition of "employer," and the fourth one, as you'll see from the document, has to do with the role of the commission itself.

I'm going to turn the podium over to my colleague.

**Mr Kerry:** The matter that I'd like to take up with the committee is the definition and application of employer which is contained in the regulations. We believe that the definition of the employer is a very key part of Bill 79 in that it requires all employers to register a province-wide employment equity plan. We believe, as multi-employer companies within the province, that the definition is too broad and is likely to create more problems than it solves.

Many of the businesses and workplaces in Ontario that are connected in any way to or are owned by a larger corporate entity would not be recognized under Bill 79 as individual employers. The regulations partly recognize the individual status of workplaces by allowing an employer to divide a province-wide plan into chapters with their own numerical goals. However, the recognition does not go far enough in that it fails to empower employees to be full and effective participants in their own relevant workplaces.

The decision-making power whether or not to divide a plan into chapters seems to rest with an umbrella coordinating committee, a group comprised of individuals from all locations across the province which may not have any knowledge, understanding or appreciation

for the local characteristics of other workplaces; that is, workplaces other than their own. Furthermore, combining all of the chapters into one plan will not necessarily, in our opinion, lead to better employment equity plans for the individual workplaces.

The definition of employer, in our view, should reflect who the employees consider their employers to be. It should be consistent with other employment-related legislation in Ontario. The Ontario Labour Relations Act, the Workers' Compensation Act and the Ontario Occupational Health and Safety Act, for example, all recognize distinct business units as individual employers.

The new organizational model in business today tends towards flatter corporate structures with separate and autonomous business units. Many corporations have business units which operate independently. These should be recognized as individual employers for the purpose of employment equity.

My own company, Jannock Ltd, for example, is the common owner of a number of companies which are not related one to another, although they may be clustered in the same geographical area. In Mississauga, for example, Jannock owns a printing company, a vinyl manufacturing company and several brick-making companies. Employees consider themselves employees of the business where they work. They are not related to employees of the other Jannock companies in the same area and they have nothing in common with them. Each of these companies operates autonomously and has its own human resources practices, policies and personnel. Under the proposed "related employer" provision, Jannock would be required to prepare one employment equity plan with a representative on the umbrella coordinating committee from each of its companies.

Stelco's another example. It's essentially a holding company of 10 separate business units, eight of which are Ontario-based and several of which have been separately incorporated as wholly owned subsidiaries.

For a comparison, part II, section 3(3) of Bill 79 recognizes that those agencies, boards and commissions whose employees are not appointed under the Public Service Act are individual and distinct employers for the purpose of employment equity, although those agencies, boards and commissions are arm's-length branches of, and ultimately report to, the Ontario government. The analogy with the private sector is very close and we believe that private sector employers with distinct business units should be treated in the same fashion.

We have some solutions to propose under this section of Bill 79. The first of these is that distinct employers need to be able to prepare separate employment equity plans to reflect the specific characteristics of their workplaces and of their individual workforces. This would reinforce the growing trend to increasing local autonomy in labour-management and human resource

matters. Where it makes sense to establish a plan that encompasses more than one location, employers should have the flexibility to establish a larger plan which would be in keeping with the flexibility of other employment-related legislation.

Last, the definition of employer should be modified to permit these options.

I'll now pass.

**Mr Crisp:** To pick up on point number 2, the possible inclusion of a related employer provision, which we understand is under serious consideration, just extends the problem of an already too broad definition of employer, whether it be one similar to that in the Ontario Labour Relations Act for organized workforces or the Employment Standards Act for unorganized workforces. With a modified and proper definition of employer, a related employer definition is not only unnecessary, but would add to the level of confusion that is undesirable.

A related employer provision would do nothing to benefit the development of an effective employment equity plan. We can give a number of examples of that. In businesses that are commonly owned, employees usually do not consider the common owner or holding company to be their employer. Rather, those employees relate to their individual workplace or business unit and will look to that unit as the employer responsible for achieving the goals of employment equity.

#### 1010

For example, if a trust company, a pension plan or a holding company owns, say, 40% of a publicly traded company, that does not affect the day-to-day employment decisions of the subcompany, nor would it affect the implementation of an employment equity plan.

Broadening the definition of employer to include related employer provisions may actually undermine employment equity. We have an example, and there are others. It's important to understand that often the larger the employee base that you have, the easier it is, eventually, to achieve the desired representation of designated groups. In statistics, if a sample size is so large that all designated groups will be represented in the sample, the goals of employment equity may not be achieved in the individual businesses.

To try and focus that, I wanted to give you the example of Zellers and the Bay, which have about 10,000 employees each, owned by Hudson's Bay Co. In two respects, regarding these as a single employer for the purposes of employment equity will not help employment equity principles. The Bay, right now, is becoming predominantly a female workforce at the executive level, which is often the target that is set out for employment equity, while Zellers is, and evidently continues to wish to be, predominantly male. If you lump them together in a single plan, it will be very



convenient for Zellers to use the employment equity that's arriving at the Bay to meet the demands of its plan. They will not have to make steps on their own in order to address the problem to the same extent they would if they were regarded as an individual unit.

There's nothing here to indicate, in any sense, that having a slightly smaller block for the plan is an attempt to skirt employment equity, and having a smaller block works exactly opposite from what it would in the pay equity situation where, taking a smaller group, you may exclude male comparisons that are necessary in order to drive pay equity. But in employment equity, the comparison is external to the group; it's in the community. Therefore, it doesn't matter what size of group you're comparing to the community comparator. That's my example.

The proposed solution is simple, and that is that a more appropriate definition of employer be created so that a related employer provision would not be necessary in the legislation.

I'll turn it over to Walt LeGrow.

**Mr LeGrow:** Bill 79 requires that all employers prepare and register a province-wide employment equity plan. This approach assumes two things: first, that organizations are all similarly structured and, second, that it will make employment equity easier to achieve.

The draft regulations require that in cases where there is more than one bargaining unit in the employer's workforce, an umbrella coordinating committee must be established with representatives of the employer and each of the bargaining agents. The committee would decide whether and how the workforce will be divided into chapters and which responsibilities will be carried out for the whole workforce or on a chapter basis.

We support the concept of employee empowerment and we recognize the value of employees' input into many issues that affect the respective workplaces, such as employment equity. We also recognize the importance of involving labour in the decision-making process at the work sites where the union members are located. An employee's input should be focused on the employee's own workplace, where the employee best understands the unique characteristics of his or her workplace and where the employee has a direct stake in the outcome of the process.

For example, at Emco we have two major parts to our company: manufacturing and distribution. In Ontario, we have seven individual manufacturing companies and 15 distribution centres or branches operating as separate and distinct businesses. By design, each of the two parts needs to apply employment equity in its own way. The manufacturing companies, all of which operate individually and have more than 50 employees, should be recognized as individual employers and be able to prepare their own employment equity plans. On the

other hand, the distribution centres are managed centrally and should be combined into one employment equity plan.

Local work sites are usually the most appropriate units at the local level because they are the organizational units which employees and designated groups focus on and identify with. For example, a native person in Cornwall is not interested in how many members of designated groups are hired in Toronto.

The requirement that all employees set up a province-wide plan will affect single-unit organizations differently than multi-unit organizations. For example, according to the regulations, a Zellers store in Windsor would be required to be part of a consistent Zellers province-wide plan and treat employment equity differently from an independent competing retail operation located in the same area. The competing company, as the only location in the province, would set its own employment equity plan. Under the current bill and regulations, however, the Zellers store would not have this flexibility.

What we propose is that Bill 79 and the draft regulations recognize that separate business units should be allowed to set their own numerical goals and timetables as chapters of a province-wide employment equity plan. They do not take the necessary next step, however, and should allow those separate business units to establish and implement their own plans.

We understand that the government is concerned that some employers will try to circumvent employment equity legislation. However, we believe that such situations will be few based on the number of safeguards in Bill 79 and the regulations which ensure ongoing compliance. Once again, an improved definition of employer becomes key. It would make it clear which organizations or businesses employ 50 or more people.

**Ms Stewart:** I'd like to turn to the fourth part of our presentation, which is related to the role of the Employment Equity Commission itself.

We believe that the commission's role should continue to be education and that should be the primary focus; knowing, of course, that the plans have to be registered somewhere, it would also serve the role of being the repository for the employment equity plans that are registered.

The current proposal that the Human Rights Commission hear complaints of individual workplace discrimination and the Employment Equity Commission hear complaints of systemic discrimination in the workplace would require that parallel systems be established to determine which commission will hear which complaint. We recommend that all complaints regarding employment equity be handled by a streamlined Human Rights Commission. It already deals with discrimination in the workplace and should be the machinery that, within the

existing tribunal, enforces employment equity rather than setting up separate, costly machinery solely for employment equity.

Our proposed solution is that the current role of the Employment Equity Commission not change and that all complaints about employment equity be heard by the Human Rights Commission. We also recommend that, in a broad scheme, a single, streamlined enforcement agency for all equity issues in Ontario be established.

In conclusion, I'd like to say that we appreciate the opportunity to be here and to present our views collectively this morning to the standing committee. We will continue to work with the Ministry of Citizenship and others in this room to provide information, recommendations, develop any ideas that may be requested of us. Thank you for your time.

**The Chair:** Thank you. We'll begin with the official opposition. There are four minutes per caucus.

1020

**Mr Alvin Curling (Scarborough North):** I want to thank you very much for your presentation. Giving us a preview of some of your concerns is also very helpful to us. But, again, once you've done that, it raises many, many questions that we'd like to ask you, but within our four minutes I'll try to target just one or two areas. They don't come with ranking of importance. I think they all are very important, the questions that I would like to ask, but we are limited in the time we have.

One of the concerns that you have, of course, is that a separate plan for each location be established, because then it will be more focused in the sense of a more effective employment equity plan. The NDP government feels that employment equity—and it makes that statement—is not a numbers game; it's about managing change. I hear them keep saying that and suggesting that. Do you find that the way it is set up would be quite adversarial in nature, if we do have that plan in which you—the employment equity plan, as already stated, becomes rather adversarial in nature?

**Ms Stewart:** I'm not sure that we fully understand your question. You're asking if it would be adversarial to—perhaps you could elaborate.

**Mr Curling:** Yes. I just want to elaborate a little bit more. You said that separate plans are much more effective than an overall plan itself, and you use the example of Zellers, that the plan that could be effective in a certain location here as a company would not be effective employment equity the other way.

**Mr Crisp:** I think I can probably that. I think it does create an adversarial situation in one sense and somewhat defeats the purpose of employment equity in another. If, for instance, the Bay and Zellers are in a single plan—they are very different companies and their managements notoriously internally don't cooperate terribly effectively—there will be a tendency for each

one to shift the problem to the other and try and avoid it to some extent. I think anything which takes away from the people themselves addressing the problem at the lowest level is going to delay addressing the problem altogether. Anything which discourages people at the low level from trying to resolve the plan in the local area—it simply throws it up to a larger group and doesn't get the job done.

**The Chair:** One last quick question, because we're running out of time.

**Mr Curling:** Another last quick question: While the plan is being drafted by the union representatives and employers, there are suggestions made that the non-union people, who are really not at the drawing board doing the employment equity plan, are not there but will be consulted. Do you feel the non-union people just being consulted is adequate enough to participate fully in drafting the employment equity plan?

**Mr Crisp:** No, we're not particularly satisfied with that approach. There are only eight unionized units out of 140 of ours in Ontario and it leaves out a substantial number of people.

**Mrs Elizabeth Witmer (Waterloo North):** First of all, I'd like to congratulate you on your presentation. You've indicated you support the overall concept of equity in the workplace and the principles, and I think what you've presented to us today are some very valid concerns regarding the operational aspects. I think you've pointed out where some of the difficulties could arise, and certainly some of them are very similar to those we've heard from employees and designated groups, as well as from the employer community.

I kind of get the impression here that your greatest concern probably is with the whole definition of employer. Is that true?

**Ms Stewart:** Yes, that would certainly be true. Really what we're looking for is the flexibility to do what makes sense for each of the businesses in the province. Not everybody is structured the same way. At Emco the example was given how employment equity would be, if they had their wishes, applied in two separate ways within the organization, and I can't think of a better example than that.

**Mrs Witmer:** I guess I would ask you, is it your understanding that in the introduction of Bill 79, employment equity, that the merit principle would always be present? Is that a given?

**Mr Kerry:** I'll try to handle that one, Ms Witmer. Bill 79, whether it's written this way or whether it's just practised this way, is going to have to find some sort of a balance, because at the end of the day the merit principle always has to be present in any organization. The days, I think, are past when organizations could not worry about merit, not worry about competency and not worry about the contribution of their employees.



But you can take the notion of merit, I think, too far. We have said here that we support the notion, we support the concept and we support the application of employment equity in workplaces throughout the province. Merit doesn't necessarily, in our view, collide head-on with that. It may mean that in the hiring of people, employers have to make extra effort to find people within the designated groups who do bring merit to the situation. It may mean employers may have to put more resources into making sure that they have trained their people so that the designated groups are not excluded.

I wouldn't like to sit here and say to you that this is all just going to be a piece of cake; it isn't going to be a piece of cake. But I don't think and none of us think that those two concepts, employment equity and merit, are mutually exclusive. We don't have 50 years of history in figuring out how to solve the problem so it's going to take some real work to get it solved, but I don't see any practical difficulties in getting it resolved.

**The Chair:** Two speakers on the government side: Ms Carter and then Mr Fletcher.

**Ms Jenny Carter (Peterborough):** I'd like to thank you very much for your very constructive brief, which has, I think, already answered a lot of the questions that might have been asked. You have discussed this question of adding a related employer provision to the bill, but I still have a query about that.

The reasons given for possibly adding that are first of all to ensure that there is consistency between who is certified as the bargaining agent for collective bargaining purposes and who has responsibility for developing the employment equity plan. The other one is to make sure that employers can't evade the employment equity plan by organizing their business into components that would be below 50 workers. So can you suggest ways in which these two particular problems could be met that would be acceptable?

**Mr Kerry:** We are multi-unit employers, as you've seen from our brief. We're in, even within our own companies, totally disparate businesses, and we can read the act and say: "This act isn't going to work very efficiently. In fact, it's going to make life a whole lot more difficult than it otherwise needs to be." That's why we've concentrated on the employer definition.

We realize, at least it's our belief, that the related employer definition is put in there primarily to get at the question of being able to reconfigure workforces so as to evade responsibility under the act—cheating, in blunt terms. We believe, and we are quite prepared to submit to this committee, at another date, wording which we think will streamline and simplify the definition of employer and which we believe will, on its face, persuade you that the requirement of a related employer provision is not necessary. So we make you that offer. We have taken some runs at it ourselves and we're not

finished, but we think that we're well on the way to having something that would improve your bill.

**The Chair:** Mr Fletcher, one last question.

**Mr Derek Fletcher (Guelph):** It's nice to see some faces that are familiar from other committees on other bills that have been before this government, before these committees.

The concept of different equity plans throughout the province at different workplaces, I think that's going in the right direction because of the autonomy which should be kept in each workplace and each geographical area. I think that's a good idea. Is there a way of having, for each of your enterprises, an equity plan that could be formed and formulated around different areas, such as a plan that would encompass everything but then when you go to North Bay, it's a little different because of the geographic area? Is that something that could happen, where you've had a plan that was big and then broken down, sort of?

**Ms Stewart:** I'm not sure I understand your question.

1030

**Mr Fletcher:** Okay, it's like a collective agreement. The Auto Workers will sign a collective agreement that covers General Motors, Ford and Chrysler, but at each plant, at each different company, it's a little different.

**Ms Stewart:** It would seem to me, the way I read the bill and the regulations now, that is precisely what it is suggesting and that is not providing the flexibility that is required to multi-unit organizations that are in different kinds of businesses.

**Mr Fletcher:** I want to know why it doesn't give the flexibility because of the differences in the different areas.

**Ms Stewart:** It takes the focus away from the local environment, where the employees relate to a scale that's province-wide that has no relevance.

**Mr LeGrow:** I gave the example of Emco. I have said, on the one hand, we'd want to do it on a company-by-company basis within Emco and, on the other hand, we'd like to do it on a province-wide basis. That's based on how we managed the business. Each of our manufacturing companies, seven in Ontario, are in a discrete market. They have their own sales force, their own manufacturing, their own product development and so on, and they're run like a discrete business within the company. I should add that all but one of our manufacturing companies is organized, but each has a separate union.

We're looking at this and saying, how can you bring together six different unions on behalf of seven different manufacturing companies when they really don't know much about each other? Each manufacturing company is like a separate company. On the other hand, our distribution business, where there are 15 branches across

the province, we run like a single business. It's separate from manufacturing, but distribution is distinct on its own and we run it as a single business.

The difficulty we have is how do you pull together a representative body, coordinating committee, that knows anything or knows very much about the other workplaces in the province in a situation like that? If you were asking me, how would you construct this to get the best out of employment equity and yet be consistent with the way you run the business, I'd say let me have an employment equity plan for each of my manufacturing businesses, and I would like one for my distribution business in total for the province.

**The Chair:** Thank you. We've run out of time. I want to thank all of you for coming today to participate in these hearings.

ONTARIO CONFEDERATION OF  
UNIVERSITY FACULTY ASSOCIATIONS

**The Chair:** The next delegation is the Ontario Confederation of University Faculty Associations. Welcome to this committee this morning, Dr Carasco. If you'd like to perhaps introduce the others, you have a half-hour for your presentation. You've seen how it works. You'll want to consider what kind of time you want to leave for the caucuses to ask you questions.

**Dr Emily Carasco:** My name is Emily Carasco. I'm the vice-president of the Ontario Confederation of University Faculty Associations. On my right is Marion Perrin, our executive director, and on my left, Glen Brown, our communications officer.

OCUFA, the Ontario Confederation of University Faculty Associations, represents 12,000 faculty members and academic librarians at Ontario's universities. We are pleased to be here this morning to speak with the standing committee on administration of justice about Bill 79, the Employment Equity Act, 1993.

OCUFA is a long-time supporter of employment equity, and we welcome the introduction of employment equity legislation. In this brief, we make two points. The first is that certain aspects of the legislation need to be strengthened and the second is that the lack of consideration given to educational equity in the legislation is detrimental to the achievement of employment equity. We'll expand on these two points, but I'll begin with the latter, that is, with educational equity.

The university as an institution is a somewhat unusual place in that it trains its own labour force. Without extensive amounts of university education, one simply cannot become a member of the faculty or an academic librarian. But universities also perform the very important task of educating people from many other occupations and professions, both through professional faculties and through a variety of arts and science programs. The simple fact is that there will be no employment equity in professions such as law, medicine,

engineering and business, as examples, if members of the designated groups are not adequately represented in the student populations of the universities. Thus, access to universities, one component of educational equity, is vital to the achievement of employment equity in society as a whole.

Access to universities, furthermore, must include access to the whole spectrum of university programs by a whole spectrum of designated groups. The proportion of women in undergraduate students has increased dramatically in recent years, so women now comprise more than 50% of the undergraduate student population. They remain, however, only a very small fraction of the undergraduates: in engineering programs 16% and in math and physical science programs 30%. Aboriginal women, women with disabilities and visible minority women from some groups, in particular the Afro-Canadian women, are barely represented at all in the undergraduate student population.

The participation of all women drops off at each successive degree level, bachelor's, master's and doctorate, so that women comprise only 37% of the doctoral students and 34% of those who obtain doctoral degrees. Only 21% of the full-time university faculty in Ontario are women.

These are examples of problems with another component of educational equity. The first component that we focused on was access. The second one is retention of students who are members of the designated groups, both during and between programs.

To retain students, their experiences while at university, both outside and inside the classroom, must be improved. Services have to be available to meet the special needs of these students. Curriculum and pedagogical practices have to be scrutinized and revamped where necessary, to ensure that they incorporate multicultural, multiracial, multi-abled issues and do not contribute to sexist, racist, ablist or homophobic stereotypes.

Recognizing that educational equity is a vital part of employment equity, OCUFA has made some substantive suggestions in its Brief to the Employment Equity Commissioner on Educational and Employment Equity in February 1992. We provided a rationale for having a separate section of the employment equity legislation dealing with educational equity. We identified measures from which an educational equity plan could be developed, discussed the importance of the role of teachers in implementing educational equity, outlined compliance and enforcement mechanisms and argued that a separate unit on educational equity be established as a part of the Employment Equity Commission.

We still think that those were good ideas and are sorry they were not taken up and included in the employment equity legislation. Their spirit was, however, taken up by Stephen Lewis in his June 1992 report



on anti-racism. Educational equity was a very important part of his vision for a better Ontario, and many of his recommendations either have been or are in the process of being implemented.

Educational equity in primary and secondary schools has received much attention through the implementation of employment equity in school boards, in kindergarten to grade 12 curriculum revision, in destreaming, in round table meetings with principals, superintendents and community groups, in special attention to ESL and AFL programs, in numerous initiatives affecting teacher education and in the impending appointment of an assistant deputy minister in the Ministry of Education and Training responsible for anti-racism, equity and access. The newly appointed Royal Commission on Learning has within its mandate an examination of educational equity in the primary and secondary school systems.

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It would seem important to note here, however, that there is still much to be done in the primary and secondary school fronts. Gender stereotyping, for example, is so much a taken-for-granted part of our culture that the schools face enormous challenges in dealing with it. Math and science anxiety and the avoidance of technical courses by girls begins early in their school years. The underrepresentation of women in the university science and engineering programs follows from practices and behaviours exercised at much earlier ages.

Educational equity in the post-secondary system, and particularly in the universities, has received far less attention than it has at the earlier stages of the educational system. Lewis's recommendations consisted of applying employment equity legislation in the universities as employers, increasing the representative nature of governing boards and adopting harassment and discrimination policies. The first of these is now before you. The Ministry of Education and Training initiatives with respect to the latter two are still pending.

Although these are important matters and are related to educational equity in the universities, they are not sufficient to significantly increase access and retention of members of the underrepresented designated groups as students in the universities of this province. Members of governing boards can serve as role models and can certainly influence trends within universities. But action on the part of all other members of the university community is also necessary. Harassment and discrimination policies are vital to the provision of environments in which women and men of all groups can feel safe, welcome and at home. But they are just a part of the environment.

In fact we want to emphasize to you today that educational equity in Ontario's universities is in imminent danger of falling through the cracks. If it does, a

large part of employment equity will follow it down. We feel strongly that this should not be allowed to happen.

We are not suggesting that the kinds of initiatives appropriate at the primary and secondary levels are appropriate for the universities. Increasing access and facilitating retention of students in Ontario universities are matters of public policy and are thus in the purview of governments. Academic matters, such as setting curriculum in universities, must remain in the hands of academics. Government can, however, play a role in facilitating these processes.

It is OCUFA's position that the government's tuition fee policies hinder rather than help increase access to Ontario universities. They are a hindrance both to members of designated groups who have been underrepresented in the past, as well as groups not yet designated, such as the economically disadvantaged. Compounding this problem is the continued underfunding of Ontario's universities. This thwarts the retention of such students by making it difficult if not impossible to provide the services necessary to support them when they do gain access. Adequate funding of students in universities does not guarantee the access and retention of students from the designated groups, but its absence undoubtedly impacts negatively upon equity.

As we engage in the implementation of employment equity, moreover, we must continue to give priority to related important issues such as education and training support for women, the availability of child care, policies about sexual harassment, the balancing of paid work and family. These are not only elements of employment equity or workplace accommodation; they are also crucial elements of educational equity. Supports must remain available for women in order that they can devote themselves to university study. Such supports must not become the responsibility solely of employers. Government must continue to play an active role in providing and supporting these issues through structures such as the Ontario women's directorate as well as through the work of the Ministry of Education and Training and other ministries.

Government can provide incentives to universities that would assist in furthering educational equity in other ways. Opportunities can be made available for continuing education for faculty members and librarians so they can make curriculum and resource materials more inclusive and representative of a more diverse student body. Opportunities to learn more about inclusive pedagogical techniques must also be made available on a larger scale. Recognition, both monetary and symbolic, must be given to efforts to change the university.

OCUFA's earlier briefs contain many suggestions for ways to promote educational equity in the universities.

We append the list taken from our brief to the Employment Equity Commissioner referred to above. Some of these can be done by the universities themselves, some can only be done with the monetary and non-monetary assistance of government. We urge the committee during its deliberations to explore ways to help salvage educational equity in our universities as a vital part of employment equity in this province. Post-secondary education must not be overlooked when public policy dictates that our education systems must be made more equitable.

I am now going to move to the legislation specifically. On September 4, 1990, the OCUFA board of directors unanimously approved a motion calling on the government to "develop and adopt comprehensive employment equity legislation which includes mandatory goals and timetables." It is almost three years since that call, and since the current government has been in power. Employment equity legislation is finally before this committee and we welcome it.

The committee has already heard from and will no doubt continue to hear from groups such as the Alliance for Employment Equity, who will suggest very specific changes to Bill 79 concerning such issues as coverage, standards of progress and enforcement mechanisms that will help make the legislation a more effective tool to achieve employment equity in society as a whole. We limit our remarks to some general observations about its effects on the academic staff of Ontario's universities.

Employment equity for university faculty and librarians is important in order to make universities as workplaces more representative of society as a whole. Employment equity is also central to the success of educational equity. Faculty members and librarians from the designated groups must participate in the development and implementation of programs and serve as role models and supports for students from the designated groups.

We have already noted that women of all groups make up only 21% of the full-time faculty, and that figure includes women faculty on contractually limited appointments. Although the available statistics are meagre, observation is sufficient to indicate that female and male aboriginals, people with disabilities and visible minorities from some groups are represented in very small numbers among the full-time faculty of Ontario universities. Members of more than one designated group, for example, disabled women or aboriginal women, are even more scarce, and the representation of women and men of all designated groups in senior administrative positions in universities is minute.

Our major regret about and criticism of Bill 79 is that it is not strong enough. You have, in the short course of these hearings to date, already seen evidence of resistance to employment equity. We fear that the weakness of the legislation combined with its lack of enforcement

provisions will make the actual achievement of employment equity as elusive as it has been under voluntary programs.

Both the bill and draft regulations made public earlier this summer prescribe in great details how employers are to go about planning for employment equity. Sanctions can be imposed if this planning process does not proceed apace. This is laudable, but a plan must not be an end in itself; it must lead somewhere. Members of designated groups must actually be hired, retained and promoted for employment equity to occur. There do not seem to be any available sanctions for employers whose plans are in order but whose workforces remain unrepresentative. The lack of time lines by which accomplishments other than planning must take place weakens the entire enterprise.

In the universities, hiring, tenure and promotion processes for university faculty are very decentralized. This makes it more difficult, although by no means impossible, both to conduct employment systems reviews and to develop guidelines to eliminate barriers. Incentives for so doing are in scarce supply in institutions that have been starved for funds for so long.

One reason why OCUFA endorses the legislation of employment equity is that the elimination of such barriers would be greatly facilitated if goals and timetables were made mandatory. Although there are some who would argue against it, we also believe that in the final analysis the peer review process by which hiring, tenure and promotion are accomplished by and for university faculty will be aided and strengthened by such requirements.

To abide by the terms of the legislation, faculty will need to take a much closer look at the step-by-step procedures used in their search and review processes associated with hiring, tenure and promotion. It will be necessary to make those steps more explicit, more standardized and better understood. This can only result in better and fairer procedures.

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Furthermore, by strengthening these procedures, faculty members will be able to abide by the terms of the legislation within the framework of the peer-review process they have always used. This will help to forestall temptation on the part of academic administrators to usurp some or all of that process in the name of employment equity.

Many collective agreements and other documents outlining the terms and conditions of employment for university faculty already contain statements, provisions and plans about employment equity. Many faculty associations and administrations have been cooperating to develop procedures by which these very variable and very decentralized processes can be described and assessed in order to identify and weed out barriers. Strong legislation with attendant enforcement mechan-



isms is necessary to assist those who seek to firmly establish the principles of employment equity in the processes of hiring, tenure and promotion.

We have argued that employment and educational equity are inextricably intertwined and that both, augmented by existing and future public policy initiatives with respect to issues such as child care, are needed to make Ontario's universities more inclusive and representative of Canadian society. Our universities' graduates go on to make decisions about the future of the country. Such decisions have to be made by everyone. Making Ontario's universities more inclusive is a prerequisite to making Ontario a more just society.

**The Chair:** Thank you very much. There are three minutes left per caucus. Ms Witmer.

**Mrs Witmer:** Thank you very much for your presentation. I particularly enjoyed it. I have two universities, Waterloo and Wilfrid Laurier, within in my riding and I know that they have taken some initiatives, but I also know that there are certainly more initiatives that could be taken.

I want to compliment you. I took a look here, I read ahead on your specific structural changes and the need to increase the availability of part-time degree programs, continuing education etc, the recognition of women's differential educational career paths.

Do you see this happening within many universities? If we focus specifically on women, I guess, or individuals who have taken time out in their career path, are the universities attempting to accommodate these women?

**Dr Carasco:** The universities have increased the number of part-time programs and systems that make it possible for people to do that, but it's really important for us to emphasize that while that is happening we want to be able to continue to encourage women and members of the other designated groups to take part in the full-time educational processes that universities have. That is, we want to ensure that women in minorities do not get ghettoized in part-time programs. The system as a whole must accommodate these groups, so we want to see an increase in those types of programs but not at the expense of the general educational full-time program.

**Mrs Witmer:** You indicate, I think, in here the abolition of the tuition fee. Would you explain why you feel that is necessary and should occur?

**Dr Carasco:** The tuition?

**Mrs Witmer:** Yes, the tuition fee is a barrier, you feel, to the designated group access to the universities.

**Dr Carasco:** We want to ensure that tuition is not a reason for members of the designated groups and for generally economically disadvantaged people not going to universities. If tuition is the barrier, then that's something the government can do something about,

whereas some of these other things are within the control of the university. Tuition is a barrier for many individuals and to say that these people can take out loans is particularly insensitive to cultures and members of designated groups that are not that comfortable with the notion of funding their university education through long-time loans.

**Mrs Witmer:** I would agree. You made the point that there's work to be done in the elementary and secondary schools. That's the area where I come from myself, and I would certainly indicate recently I was in a classroom and I was surprised at the lack of self-esteem that some of the senior female students had and the fact that they still didn't feel today that they had access to some of the areas that were traditionally male. There's a lot that needs to be done, and that's going to be key if we're really going to see a change in this province.

**Ms Zanana L. Akande (St Andrew-St Patrick):** I was particularly interested in your idea of educational equity, which is unfortunately beyond the scope of the bill but, nevertheless, an extremely interesting one and an important one, which I would support.

Can I draw your attention to one of the areas that you pinpoint, suggesting that compliance be tied to special grants or contracts which in fact would promote the idea that only if and when—am I interpreting this correctly? Perhaps I should ask for your interpretation of exactly what that means so that it would be on the record.

**Dr Carasco:** I think the suggestion that we have in here is that those who are doing well should certainly be rewarded and commended for what they are doing.

**Ms Akande:** And your interpretation of "doing well"?

**Dr Carasco:** In terms of meeting actual goals and following timetables that are set ahead of time. One of our concerns is that the emphasis on planning—and we saw this with the federal contractors program that most universities are under—that the emphasis was on creating a good employment equity plan. Most of our universities already have employment equity plans in place. So we're ahead, we have a plan. But that doesn't necessarily mean we have employment equity on our campuses. We have a plan on paper. Not much has happened since then. What we would like to see is a system where the university administrations are encouraged in ways that are meaningful to them to make sure that those plans are carried out.

**Ms Akande:** And you are suggesting that ways that are meaningful to them are through the grants?

**Dr Carasco:** I would not say through basic funding of universities. Obviously, all universities should get as much as they can to carry out their regular programs, but there are ways of rewarding those who meet their goals and timetables.

**Ms Akande:** Can you tell me, has OCUFA gathered statistics which would support the fact that many of those in the target groups are employed, when they are employed, on a part-time or a contractual basis? Do you have any statistics which would support that fact?

**Dr Carasco:** For members of the designated groups? We have on women. We have less statistics on members of the designated groups, but I've now taught in the university system for 13 years and have visited most universities in Canada. It doesn't require a genius; you can just look around at the faculties and you see where they are. They are at the assistant professor level or on contract.

**Ms Akande:** I suppose that's why I've been able to manage it, because I'm not a genius.

**Mr Robert V. Callahan (Brampton South):** I'm just new on this committee, but do I gather from what you're saying that these people in the designated groups that are within this bill will have to meet the very challenging rate of marks required today to get into almost any university? Is that going to be a continued requirement of these groups?

**Dr Carasco:** I have never seen a contradiction between any equity initiative and the whole issue of merit or qualifications.

**Mr Callahan:** No, but that doesn't answer my question. Does this bill encompass the fact that these people who are to be helped by this bill will be required to compete with those people who are not in the group on the basis of marks, as has been the case of every person trying to get into university over the history of the last 10 years?

**Dr Carasco:** I guess I had just taken for granted that, yes, they would meet the requirements of any university for entrance. But things like tuition, things like the relevance of their educational experience when they come in should not be the barriers.

**Mr Callahan:** So what you're saying is that these groups that are included in this legislation will be required to have the same type of marks; in some universities it's an 85%, some of them 75%, to get into law school, 80%. They're going to have to have these, and that's what you're espousing, that these groups that are about to be designated under this bill are not going to be given any extra leg up over those people?

**Ms Akande:** Yes.

**Dr Carasco:** Yes. I guess I thought that was so clear that I didn't state that.

**The Chair:** One last question.

**Mr Callahan:** The other thing is I notice that obviously you're university-oriented, but you did refer to primary and secondary education. I find it passing strange that this government is about to remove the provisions of the hard-to-serve in the Education Act and at the same time it is trying to give these people a leg

up. That's just a statement. I find that a contradiction in terms, trying to help kids with disabilities by removing, on the one hand, as I say, the hard-to-serve provisions and, on the other side of the coin, espousing that they should be given a leg-up in university. I just find it incredible.

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**The Chair:** Dr Carasco? It may have been a statement. I don't know whether—okay, no reply to that. Thank you for your presentation and your participation here today.

**Ms Akande:** I'm terribly sorry, but I'm wondering if I may be indulged just to make a comment or to clarify the last speaker's comment. Could I?

**The Chair:** Just simply to make a point that what he stated was not clear?

**Ms Akande:** It's a point that relates directly to the hard-to-serve.

**The Chair:** I'd rather leave it. If the member has made a point that is incorrect, it's on the record and that could be corrected at some other point. But I'd rather not do that at this point. Thanks very much for your participation.

#### CANADIAN HEARING SOCIETY

**The Chair:** The Canadian Hearing Society. Welcome, Mr Ryall. You have half an hour for your presentation and I hope you leave enough time for questions and answers.

**Mr Gordon Ryall:** Just for informational purposes, I'd like to explain a little bit about who the Canadian Hearing Society is. We're a non-profit organization providing services to deaf, late deafened and hard-of-hearing people, mostly within Ontario.

The Canadian Hearing Society last year did submit a brief outlining our concerns with employment equity. That was in February 1992. I have included a copy in your handouts. That would be the third, fourth and fifth pages of your handouts. What I'd like to do is focus on Bill 79 itself today. The first section of that is the workforce survey.

Overall, we're satisfied with the plan but we have noticed that it appears that each employee has the right to refuse to answer the questions within the questionnaire. The Canadian Hearing Society believes that self-identification is the best method, but we also need to make sure we have complete workforce information or data in order to make sure that the employment equity plan works out effectively. For example, if 30% of the employees within a large workplace refuse to answer those questionnaires, then how are we to make sure that the employment equity plan is appropriate?

I believe that there should be some kind of standard—for example, a minimum of 90% of the workforce must respond to those questionnaires in order to make sure we have enough data to base the plan on.



That's just a general suggestion we have. I'm afraid that a lot of important information may be missed if the employees are not filling out the questionnaire.

Another area is employment policies and practices. Within Bill 79, in general we feel the plan is good, with the exception of the area of identification of barriers. The bill suggests that the employer will make the decisions as to which policies and procedures present barriers to members of the various designated groups. Quite often, deaf, late deafened and hard-of-hearing adults feel left out of this process. Most often, the employers and the union bargaining agents do not recognize some of the barriers for deaf, late deafened and hard-of-hearing people. We feel that when the employers do their review of the policies and practices, they must ensure that they consult with consumers.

As for the qualitative measures, the Canadian Hearing Society in general is satisfied with that section of the bill.

As far as the numerical goals listed, the Canadian Hearing Society would very much like to have a breakdown of people with various disabilities. This will enable us to identify whether or not the employment equity plan is working well for deaf, deafened and hard-of-hearing people. We have found there are some difficulties for us without having that breakdown to measure the success for our communities.

The next section is on employee participation. We believe that an employment equity plan must include employees and we are pleased to see this within the bill itself. Employers must be reminded of the right of access to all information for deaf, deafened and hard-of-hearing people. We have a concern that the employment equity plan process will be held back by the lack of interpreting services.

We've also noticed, as far as information and communication, that employers must submit annual reports, and we hope that a breakdown of the various disability groups, including deaf, deafened and hard-of-hearing people, can be recognized within those annual reports. That will again show whether the employment equity plan is successful for the communities that we serve.

The Canadian Hearing Society sees a solid framework in Bill 79 which does support changes in Ontario's workplaces. This cannot be successful without government and public support in other areas, such as the areas of equity in education, access to trades and professions and access to information as it pertains to deaf, deafened and hard-of-hearing people. We would like to emphasize the importance of developing standards for measuring the success of each employment equity plan as well as to assist the employers in understanding what accommodations deaf, deafened and hard-of-hearing people expect to be included within those employment equity plans.

I have nothing further to add at this point, so I would be open to questions from the committee.

**The Chair:** There are approximately six members per caucus. The government members, we have Mr Winninger and Mr Mills.

**Mr Callahan:** Six members or six minutes?

**The Chair:** We have six minutes per caucus. I apologize for any utterance I made that confused all these people.

**Mr David Winninger (London South):** Thank you, Mr Ryall, for your presentation. I notice in the attachment to your written presentation, the Response to the Employment Equity Consultations dated February 10, 1992, under "Workers' Participation in Employment Equity Planning," you indicate that it's the belief of your organization "that the employment equity plan should be negotiated by management and union outside of the process of collective bargaining and then the collective agreement changed...to integrate aspects of the employment equity plan that require changes."

We heard a number of presentations last week supporting the view that seniority rights in collective agreements are sacrosanct and shouldn't be in any way diminished by employment equity initiatives. I wonder if you could comment on how seniority rights might be balanced with employment equity initiatives.

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**Mr Ryall:** I believe that we do need to strike a balance, which means looking at each situation. For example, it may be possible that one company or large corporation may have no hard-of-hearing people working at its company and it has not ever hired anyone within that group for the last 10 or 20 years. Obviously, I think that seniority should be widened somewhat so that we can make sure that we are able to accommodate the recruitment of deaf and hard-of-hearing people. In the short term, I do believe that we are going to have to give up some of those seniority rights for the long-term benefit. I think in the long term they should be maintained.

**Mr Winninger:** Thank you.

**Mr Gordon Mills (Durham East):** Thank you, Mr Ryall, for appearing here this morning. I must say that I got thrown a little bit, first off, because I am used to seeing the signer with my colleague Gary Malkowski. I looked around for him and it kind of threw me a bit.

However, that aside, Bill 79 refers to persons and people with disabilities and I'd just like to know, sir, from you if you have a position on what you would see to be more appropriate to use in this bill.

**Mr Ryall:** I'm sorry. Could you explain it a little bit more of what—are you looking for a change in the wording?

**Mr Mills:** Yes. I'm asking which you would prefer, "persons" or "people," or if you have a position on the

appropriateness of using either one in the bill. We have both of them in there at the moment.

**Mr Ryall:** Right now I believe that the words are interchangeable but I do know that there are some deaf and hard-of-hearing people who have very strong feelings about the exact wording of persons with disabilities. Some of them feel that being labelled disabled doesn't make sense. They identify themselves as deaf or hard-of-hearing, and for that reason they feel that it's important to have a breakdown of deaf and hard-of-hearing people, which is what I talked about earlier about the measures, having the breakdown in each disabled group. Deaf and hard-of-hearing people should be counted within the employment equity plan.

**Mr Mills:** Thank you very much.

**The Chair:** Ms Carter, a quick question.

**Ms Carter:** Okay. Yes. You raised the question of self-identification. You agree with it but you point out that there might be problems with people not identifying themselves. Can you suggest some way in which this problem could be overcome by somehow protecting the rights of individuals to privacy although they are self-identifying?

**Mr Ryall:** I think the best thing that we could do would be to give some sensitivity training to supervisors to make sure that they approach the individuals in the workplaces in an appropriate manner, that they're able to explain what the point of self-identification is and why they are looking at counting these numbers, to explain the purpose of it and how employment equity will have an impact on that individual person. I'm sure that if it is explained in a positive manner, the individual deaf or hard-of-hearing person would be willing to provide that identification and be counted within that questionnaire.

**Ms Carter:** Yes, it is within the act that people be given information before they fill in these forms.

**Mr Ryall:** But we feel that the statement must be put into Bill 79 in a stronger manner. It says very strongly in there that the employee has the right not to answer. That's a pretty strong statement. I think we need to make sure that there are reasonable data before going ahead to implement those employment equity plans, and that's where our concern lies.

**Mr Curling:** Thank you for your presentation. It was extremely focused. One of the things that jumped out at me when you made comments about the forms to be completed by the employees. You mentioned that at least 90% of the forms should be completed before we even proceed with the employment equity plan. My question then is, is there any penalty that could be levelled on the employee or the employer if this is not done?

**Mr Ryall:** If, for example, the individual's supervisor goes to the employee several times and they're still

feeling reluctant to fill out the survey, then I think there should be some measures to force them to come up with the information within the corporation, but I don't know exactly how we would do that.

**Mr Curling:** My other question, which you touched on and which I think has been quite a concern to many of the designated groups, is that you spoke about subgroups; you didn't use the word "subgroups," but you feel that it should be broken down in a way that if we have a disabled community, you may have, I think you stated here, deaf, late-deafened and hard-of-hearing persons. I got two messages there, whether or not the disabled group should be designated and then the subgroup as being deaf, and then there's a sub-subgroup, if there's such a term, of hardened deaf beneath those subgroups. Is that what you're saying, that there should be subgroups and a further breakdown of other subgroups within that group?

**Mr Ryall:** In general, I feel that some deaf people and hard-of-hearing people, or even late-deafened people, would label themselves as deaf or hard of hearing; it depends on how they communicate and what their communication needs are. I think by breakdown we mean that we're looking at the total overall disabled community, but then under that there would be some kind of breakdown statistically of, for example, how many blind people are being employed, how many are using wheelchairs, how many are deaf or hard of hearing. Does that clarify it for you?

**Mr Curling:** Yes, you answered it. But as you answered that I wondered about the bureaucracy and the paperwork that would be involved there and who would be asking those questions about how severely deafened or late-deafened that person would be. Let me go back a little bit. You said that you would need that they would say "disabled" and under that "deaf," and under that, again, one should state whether they're late-deafened. Now, taking that to other disabilities which are in there, should they also be broken down? Would you recommend that breakdown in other disabled groups?

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**Mr Ryall:** I am recommending a breakdown in the subgroups, but I believe it's up to the individuals to decide whether they would list themselves as deaf or hard of hearing. I do realize that yes, it would create more paperwork, but for us, we feel it's very important to be able to measure that, because quite often deaf adults aren't able to get job promotions, are unable to become managers, and it's harder to be employed to begin with. I think the bottom line is jobs. We need to be able to measure that and if the employment equity plan is meeting the needs of that community. So we would support the concept of a more specific breakdown.

**Mr Curling:** Did I hear you right when you said



that seniority rights conflict with employment equity principles?

**Mr Ryall:** I think there will be times when there are conflicts, yes, but I also believe that we need to look at the individual situation; for example, if it's a large corporation. I can think of one company that has not yet ever hired a deaf or hard-of-hearing person over many, many years. I think that because they don't have any deaf people in their employ, it's obvious that employment equity should take them into consideration to a higher degree than specifically seniority, because it's been such a long time that they've never hired anyone from that category.

I am sure that in most cases the priority will be okay to follow the normal standard of seniority and employment equity will gradually get the designated groups into those corporations. It would be the exception that employment equity would have to be given higher points than seniority. You'd have to look at the individual situation.

**Mrs Witmer:** Thank you very much for your presentation; I enjoyed it. I notice here in your original presentation to the commission that you indicated the need for sensitivity training in the workplace. I guess that obviously also needs to occur even within the wider community, because certainly I think if people were aware of the barriers that you face and were more sensitive, they would be more apt to employ people from your community at a later time.

You mention here that resources should be made available to the employer to pay for technical devices and interpreters. Are you looking for government support here?

**Mr Ryall:** I believe it goes hand in hand, that there has to be a cooperative effort. I'm sure if we look at the larger employers, they may be able to afford the support services that would be required. If it's a very small company, maybe 10 to 50 employees, it's possible that there may be some financial difficulties in doing that. Therefore, I think we should be looking at some kind of assistance, some kind of standards for the workplace, in those situations or some kind of tax credit to encourage them to hire people within those designated groups where the company may require some ongoing funding to do that.

**Mrs Witmer:** You also mention that there is a shortage of interpreters, and I've personally become aware of that. How could the government be helping to encourage that this be dealt with? What can be done? That's a very serious problem.

**Mr Ryall:** I think it would be nice if the government would seriously consider funding the interpreter apprenticeship programs. The funding was cut last spring for our interpreter apprenticeship program. We are trying to come up with some creative ways, such as getting

interpreter training provided under the jobs shortage list. I believe we need help in order to escalate the increase in the number of trained interpreters in Ontario.

**Mrs Witmer:** You've indicated here that there is a need to consult with the designated groups around the area of identification of barriers, and I would certainly agree with you. I don't think there's any way that an employer can thoroughly understand the type of barriers, whether it's disabled people or people from the racial minority groups, face. You are, I guess, recommending that quite strongly.

**Mr Ryall:** Yes, I am.

**Mrs Witmer:** If there were one thing that you would say to the government that you would like to see changed within the bill, what is that? Is there one area of greatest concern to you?

**Mr Ryall:** I think the biggest concern I have about Bill 79 is just making sure that in those annual reports, or whatever is to be presented, there are statistics that show the number of deaf and hard-of-hearing people. That is what we would like to see the most, because I think we do need to come up with a way of measuring that. I think you need to remember that we're talking about almost 10% of Ontario's population being deaf or hard of hearing, and that's a very large number.

**Mrs Witmer:** So you're definitely looking for subgroups within the disability designation?

**Mr Ryall:** Yes, I am.

**Mrs Witmer:** Obviously, that's going to create a few problems, because there are so many different groups which perceive themselves to be within that category. I know we're going to hear today from the Epilepsy Association; we've heard from the learning disabilities. It could become very complicated. That's an issue the government will need to wrestle with.

**The Chair:** Thank you, Mr Ryall, for coming and participating in these hearings today.

**Mr Ryall:** Good luck.

#### NORTH BAY IMMIGRANT AND VISIBLE MINORITY WOMEN'S ORGANIZATION

**The Chair:** North Bay Immigrant and Visible Minorities Women's Organization, Ms Tolou Rouhani. You have half an hour for the presentation. Did you bring a prepared brief, by any chance?

**Ms Tolou Rouhani:** Yes, I have for myself, but I didn't have the time or the resources to make 25 copies for the other members.

**The Chair:** That's fine.

**Ms Rouhani:** If you like, later I can hand it over and you can make copies for everyone.

**The Chair:** Wonderful.

**Ms Rouhani:** Would you like me to go ahead?

**The Chair:** Yes, please, at any moment.

**Ms Rouhani:** I'm delighted to be sitting here today expressing my feelings and sharing my ideas with you on such an important piece of legislation.

Employment equity is about justice and equality; it's about fairness and equity; it's about access and removing barriers. I'm here today to tell you how dismayed I got on the day I was watching the discussions in the House on the second reading of this bill. Watching and listening to our government representatives saying that this province does not need an act which will ensure social justice and equality shocked me.

Ladies and gentlemen, there is no good or bad time for justice and equity. You, the elected government representatives of this province, are responsible to every citizen in this province for the same reason.

I came to Canada 10 years ago as a government-sponsored refugee, because my own country of birth did not want me. The only reason I'm here is that I had to flee an unjust, inequitable government which did not recognize basic human rights principles. But this beautiful country gave me refuge. Your government, a government that strives hard to listen to the voice of its people with a democratic political system, is very unique. When you stand on any one point on this planet and want to choose a place to raise your children and breathe the air of freedom, your only choice is Canada. I'm proud of my choice.

This country is viewed by the people of the world as the most advanced country, both materially and spiritually. I know the reason why: It's because of the fact that this nation was built on the skills and talents of immigrants and refugees. It is the diversity of cultures and visions which has led to such a progression. Canada, in particular Ontario, is approaching a reflection of the world's proportional racial population, and this should be reflected in Ontario's workplace. In particular, we must tap into our native human resources, which are the foundation of our country.

Bill 79 is just what you need to make Ontario the most prosperous province in Canada. Your most valuable resource is your human resources. Can you just imagine an hour or a day of that going to waste? I can, because only 12% of the women of Canada are working in the jobs of higher category and because close to a million and a half of your human resources in Ontario, most of them women, are on social assistance.

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I have seen and talked to hundreds of immigrants and refugees: the chemical lab technician who is cleaning the washrooms of this very building, the engineers who are driving cabs, the teachers who are changing the beds at the Delta Chelsea hotel. It is extremely unfortunate to open the door of the country and then let people go to waste. It is not only your responsibility to ensure that this act gets passed with many more teeth, but it is to your advantage. It only makes good business sense as

we are approaching a globalized consumer economy. Multinational companies which have hired people of diverse cultures are making a hundredfold higher profit than others.

Here I would like to mention what made me feel hopeful while watching all of you on my TV screen. It was listening to Mr Alvin Curling, who spoke so eloquently on this bill. You, Mr Curling, were the only member of the opposition who spoke in a non-partisan manner. Your recommendations should be taken seriously, as I hope ours will be. You talked about the absolute importance of education and training equity and its connection to employment equity. Employment equity cannot be fully achieved without education and training equity. You made a number of other recommendations. I really enjoyed you. Thank you.

I would like to share with you some of my recommendations to ensure a truly equitable Employment Equity Act.

(1) The government should use some of the valuable recommendations made by the Alliance for Employment Equity and the Women's Coalition for Employment Equity and continue ongoing consultations with these groups.

(2) Define words and make them part of the law and not the regulations, because this is the only way standards and objectives become clear and are not subject to different interpretations which further discriminate. The wording used in this bill is extremely weak; for example, "reasonable effort." What is reasonable to me is not to you.

(3) The recommendations in the report of the Task Force on Access to Trades and Professions in Ontario should be implemented, as certification and equivalency issues have been barriers to immigrants. That's why they clean the floors instead of working in the labs.

(4) Racism and employment equity are connected. I recommend that this government pool the resources of the Ontario Anti-Racism Secretariat and the Employment Equity Commission together for the purpose of broader public education and not spend millions of dollars creating different levels of bureaucracy dealing with these issues. This public education to me is one of the most fundamental and challenging jobs.

Thank you for your time and your ears listening to me. I welcome any questions you may have now.

**The Chair:** We'll begin with the official opposition. Mr Curling, seven minutes.

**Mr Curling:** In anticipation, I know that my colleagues' feeling—

**Ms Rouhani:** I don't belong to any political party, by the way.

**Mr Curling:** Well, that's good and may be healthier this time with employment equity. I fully agree with you.



**Ms Akande:** I'll bet. You can't get your head into the room.

**Mr Curling:** I'm sure that my colleagues on the government side would agree with me too that employment equity legislation must have teeth in it. That's why they do agree with me and with you in that respect. To have employment equity legislation that is weak, or even a regulation that attempts to define it that is not very clear and is vague, can be much more damaging in that sense.

**Ms Rouhani:** Absolutely.

**Mr Curling:** I would then ask you, do you feel some of the things in the regulations—some are rather vague somehow—could be placed in the legislation?

**Ms Rouhani:** You know what? I am full-time mother and a full-time welfare worker and 10 million other things, so I didn't have a chance to read the totality of the regulations, but having skimmed through them and just finding them so laissez-faire, I felt that a lot of the things were subject to interpretation. They should be put in the act to avoid any kind of—I mean, the supervisor of my welfare department says that's part of regulations; we're not supposed to do it; we're not obliged to do it. But the act says we have to do it. We have to abide by that.

I have to tell you all that I'm really happy. It's progressive to be coming up with something. It's better than nothing. But I would like that something to be more perfect than imperfect. Mr Curling, you have read that like every member here and you must know which areas. Would you like to tell me which areas you think, and then I can—

*Interjections.*

**The Chair:** Order.

**Mr Curling:** I think very much so—that's what the whole purpose is about. One of the things about hearing here is to listen to you and also, in the meantime, to take the opportunity, as we listen, to advise the government that these are concerns that we have; for instance, first, to start with, that we feel that employment equity legislation is necessary.

**Ms Rouhani:** Absolutely.

**Mr Curling:** We made that very plain here in the Liberal Party, and forget about the partisan; I want that and I will fight to get that. So that is established.

Some of the suggestions we give we hope that the government will listen to and take that advice. So there are many things. For instance—and I'll use one—we believe very strongly that all the designated groups that are qualified can compete at the level. They need that access in there, and the merit principle should be a part enshrined in legislation.

That is only one. I won't take your time with your presentation. Because I know you're a quite capable

woman, whatever definition they give you—a woman and a woman of colour, what have you—you're qualified, and we hope that that merit principle—that's only one, and I have many, many more.

**Ms Rouhani:** Is there a doubt that the designated groups would be unqualified? Is there a doubt? I always assumed that that would be the—

*Interjection.*

**Ms Rouhani:** You know what? I think people misinterpret. I think Mr Curling is correct here. I think that's subject to misinterpretation, and that's why there is so much fear out there and the white male is telling me, "You're going to come up and take my job because you are a female and you're a visible minority." I think you're correct there, because the ignorance still exists that people of colour are going to get the job just because they're coloured. So I think that has to be clear in there, saying you have to qualify and compete with the rest of the world, but in addition you're a woman and/or coloured or disabled or whatever.

**Mr Curling:** I'm just glad you said it, because I couldn't have said it as good as you said it.

**Ms Rouhani:** Thank you. I think the other groups have done well. I know the government is not too pleased with them, the other two women's groups and the Alliance for Employment Equity, but I think they have quite a few good recommendations and they should be used.

**Mrs Witmer:** Thank you very much for your presentation. I certainly did appreciate it and I was really pleased to hear you mention that you felt one of the greatest obstacles that individuals presently face is the lack of education and training, because on July 13, 1993, in the House, I indicated that the key barriers to the lack of employment opportunity in this province are education and training. Unless we provide all individuals with the appropriate access to education and training, we're never going to have employment equity.

So, personally, that's the key. I guess that needs cooperation. There's a lot that the government needs to do, the employer community has a job to do, and obviously, we need to work together. I hear you saying that you also recognize the merit factor—

**Ms Rouhani:** Absolutely.

**Mrs Witmer:** —and that, given that people have the same employment and training opportunities, they can then compete equally for the jobs, regardless of who they are.

**Ms Rouhani:** Regardless. Absolutely.

**Mrs Witmer:** Okay, I would support that. But let's go back and look at some of the pre-market conditions that prevent people from accessing employment opportunities. Some of the things I've talked to in the past are, for example, English as a second language, child care, student loans. What are you seeing? You represent

a women's organization. I know we have Focus For Ethnic Women in my community. These are some of the obstacles that individuals do face. How can we eliminate some of those problems?

**Ms Rouhani:** What I gathered from your question is, are we going to open up spaces for people who are not qualified to fill them through the employment equity? I'm just trying to repeat you so I understand you better. Is that what you just said?

**Mrs Witmer:** No. I'm simply saying—

**Ms Rouhani:** Because the gap in education exists in immigrant women, the literacy problems and other equivalency issues and stuff?

**Mrs Witmer:** That's right.

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**Ms Rouhani:** So when we are bringing in an act now, how are we going to fill those seats up? I understand you.

**Mrs Witmer:** That's right. How do we prepare people so that they can compete equally?

**Ms Rouhani:** I understand you now. I think this province has, at the moment, tons of qualified people. I have my MBA, specialized in marketing. I am doing nothing compared to what I should be doing, and there are thousands of others like me who could be in the right place doing the right jobs. So I don't think we are lacking at this time—once employment equity becomes the law, whatever people are competing, I don't think we lack human bodies to fill the jobs, from the racial minorities, from the disabled, from women, whatever.

The next concern is to address education and training, so the newcomers into Canada and the people who are just coming in could be accessing, so they can remove their barriers. That's where I recommended the report on access to trades and professions in Ontario. Those recommendations, that report came from the commission three years ago, four years ago. We love doing things and shelving them. Those are wonderful recommendations in there.

**Mr Callahan:** It's called OTAB by whatever stripe.

**Ms Rouhani:** Through OTAB, what you just mentioned, I believe that OTAB should encompass the totality of the population, and as you know, the representatives are going to be there so they're going to ensure that those programs are going to be offered in every community. So I would say that literacy and the rest of it would be addressed with the rest, but I would hate to ghettoize it and say that this is just because of isolation, and in the past it was isolated, different programs and different levels of government offering—but I would hope OTAB would address right from lifelong learning to the rest of it.

**Mrs Witmer:** It certainly has the potential to. I know in my own community I have many professionals and people in trades who have the qualifications but

they simply can't access those, and as a result, they're forced into jobs that they're certainly overqualified for. So there seems to be a problem, and it's unfortunate that we haven't taken some steps forward regarding the report that was done. We seem to be on hold.

Thank you for your presentation. How many women do you represent in North Bay? I was interested.

**Ms Rouhani:** There's about 70 to 80 women who are part of this organization, but there is much more. We have a lot of Vietnamese. In fact, we just had a little mini-conference the other day regarding OTAB—I just wanted to bring that information back to the committee—and there were about 30 different nationalities represented in that little committee.

North Bay is not Thunder Bay, by the way. People in Toronto think North Bay is Thunder Bay. It's North Bay, 52,000 people, a little town close to Sudbury.

**Mrs Witmer:** So, 30.

**Ms Rouhani:** No, 70 in totality but 30 different cultures.

**Mrs Witmer:** Cultures represented there.

**Ms Rouhani:** Yes, it's really exciting. It's not everybody in Toronto; we have people up north too.

**Mrs Witmer:** I was going to say that, and I think that's important. Sometimes we think that it's all concentrated in the Metropolitan Toronto area and so that's why I wanted to ask you that question.

You would say that the women within your organization certainly share the same principles and goals that you would be committed to.

**Ms Rouhani:** Absolutely.

**Mrs Witmer:** Thank you.

**Mr Fletcher:** Thank you for your presentation. You drove all the way from North Bay?

**Ms Rouhani:** Yes. I woke up at 5:30 this morning.

**Mr Fletcher:** That's too bad. The government side did want to travel to the northern communities, but the opposition said no.

**Ms Rouhani:** I understand.

**Mr Fletcher:** I understand also.

**Ms Rouhani:** I think you guys have to stop being so miserable. Get on with it.

**Mr Fletcher:** Yes, I agree. I think if you look at the employment equity and what you were saying about the access to the trades and professions, OTAB is a good program. In fact, OTAB is going to incorporate access-related considerations in its apprenticeship training program. The ministry of skills and development is going to translate and distribute promotional materials, outlining trades certification processes in different languages so that people can understand them. The ministry of industry and trade and technology, labour and skills is going to ensure that access to the pro-



fessions and the trades issues is addressed in federal and provincial immigration designation processes. So there is work going on.

If we look at the education part and what this government has done as far as education is concerned, we have introduced an anti-racism curriculum in the public school system so that we can start knocking down barriers in that sense.

**Ms Rouhani:** That's new to me. What anti-racism curriculum?

**Mr Fletcher:** A curriculum for schools.

**Ms Rouhani:** When was this introduced?

**Mr Fletcher:** It's being developed and it's going to be introduced into the schools.

**Ms Rouhani:** Oh, it's not introduced; it's developing. But you haven't done any consultations—

**Mr Fletcher:** Oh, yes. Also, with the destreaming issue. Destreaming is another way that we can begin to knock down barriers that have always been put in place. If you look at the stats, if you look at what's happened over the past where we've come to realize people of colour, people with disabilities, people from low socioeconomic backgrounds have been streamed into certain areas which are dead-end areas or low-paying-job areas, and this is a practice that has to end—this government has started to move in that direction and we do have a policy that's in place.

Employment equity becomes part and parcel of a lot of different packages that are being introduced, and I listen to the opposition saying, "Well, we all see a need for employment equity, we all see that we want employment equity," and yet when you ask for specifics about employment equity, the only thing is that, "This one is too weak." "What are your suggestions?" "Well, this one's too weak," and that's what we keep hearing, but there are no specifics coming from other people except for groups such as yourself, and I appreciate your groups coming in.

As far as your experience and the experience of some of the people that you liaise with, when people come to Ontario, to Canada, and they're looking for employment, are they getting in the door for an interview? Is that happening?

**Ms Rouhani:** People are not getting anywhere. As I mentioned, I did a report for Comsoc, for the Ministry of Community and Social Services, three years ago looking into the refugees and the immigrants and their job categories and what they were doing at the moment. Qualified people—there are barriers upon barriers. If it is not their accent, it's something else. If it's not their clothing, it's their smell. It breeds, it's just ongoing, and I think that it is internal and it is the system that has to look at that. That's why I talked about the education process and what an important and enormous task you guys have to educate the larger public. I think that's

absolutely essential. I think part of the education process has to be the total acceptance of different human beings as part of this global civilization and not just "Bear with me because I'm black." It's re-programming human brains—

**Mr Fletcher:** I understand that. One of my comments was that it's quite simple to introduce legislation that says you must hire or you must do this, but one of the biggest barriers to employment equity is here—

**Ms Rouhani:** Absolutely.

**Mr Fletcher:** —and that's one of the most difficult things to change. But what you said about what other people think about Canada, if we started to look at ourselves as Canadians, if we started to look at ourselves as being, yes, that's exactly what we are, then we can start changing—

**Ms Rouhani:** I have two recommendations for the government. I think one would be a good marketing strategy for this act in terms of being really global in its strategy, not regional, not local. Let's share this pie. The more we share the larger it gets; the more we plant the more will we get flowers out. Let's get a global vision to the marketing of this.

The other thing is, I know several ministries have combined their resources to create jobs and economic development through a Jobs Ontario community program, but I really think you want to get rid of some of the fears that exist in this province at the moment—not some; that's a lot of fear. Every day in my office, 20 people apply for social assistance alone in a little town called North Bay.

You have to look at job creation. Maybe while you're working at this Employment Equity Act, you will be—maybe this is the wrong committee I'm talking to, but economic development should be your priority—

**Mr Fletcher:** That is a priority.

**Ms Rouhani:** I know, but, Jobs Ontario, the training stuff, is not solving anything. You have to really look at it very proactively and go ahead gung ho. Bring some businessmen from China, for God's sake, or some investments into this province so we get rid of the fear and encourage business, because business feeds into that. While you're doing that—

**The Chair:** Ms Rouhani, I don't want to disconnect you, but I do want to ask Ms Akande to ask her final question and perhaps you can weave your answer into it.

**Ms Akande:** Thank you, Ms Rouhani. I'm very interested in your presentation. I do, however, identify some contradictions and I'm hoping you will help me to understand them. In a general, overall way, and please correct me if I misinterpret, one of the things you've emphasized is that the bill doesn't go far enough and that you are more supportive of the approach that has been espoused by one member as part of his party.

The reality of it is that one of the things that was most criticized by the opposition is the fact that the numerical goals we recommend in the legislation were interpreted as quotas and seen as being negative rather than positive. It would be my belief that numerical goals would provide a basis by which we could evaluate whether people had achieved or moved along the continuum. Are you in agreement with numerical goals?

**Ms Rouhani:** Absolutely. I don't think that's a deterrent at all. Definitely. How else will you be able to evaluate?

**Ms Akande:** The other—

**The Chair:** One final question.

**Ms Akande:** I'm sorry, I just wanted to be clear—

**Ms Rouhani:** No, I want to hear it from her. Just one more question.

**The Chair:** Ms Rouhani, I'm the Chair, in case you forgot that.

**Ms Rouhani:** I drove all the way here and—

*Interjections.*

**Ms Akande:** One more question. The other thing that I wanted to clarify in your presentation is that you do support, as we do, that education is extremely important in ensuring that people are not opposing the legislation out of ignorance, though both of us must recognize that some people demonstrate selective understanding. We also do support education. Are you of the opinion, because I am not, that education should proceed instead of the legislation or along with it?

**Ms Rouhani:** I think education should start right now because this is an inevitable piece of legislation; it's going to be there.

**Ms Akande:** And so proceed with it?

**Ms Rouhani:** Absolutely.

**The Chair:** Ms Rouhani, thank you for coming from North Bay to make your presentation to us today.

**Ms Rouhani:** It was a real pleasure. Thank you very much for this opportunity.

**The Chair:** This committee will resume at 1:30 pm.

*The committee recessed from 1154 to 1330.*

UNITED FOOD AND COMMERCIAL WORKERS

**The Chair:** I'd like to call this meeting to order. I'd like to welcome the United Food and Commercial Workers here to these hearings. Who do we have here now? I would allow you to introduce yourselves and then whoever the main speaker is can begin, with a half-hour presentation and questions and answers.

**Mr Thomas Kukovica:** My name is Tom Kukovica, and I'm the Canadian director of UFCW Canada. Let me present the people with me: on my right, Jay Nair, who is a business representative of UFCW, Locals 175 and 633 here from Toronto; at my far left, Pearl MacKay, who is an executive assistant to the president

of UFCW Local 1000A, representing Loblaws and other employers in the province, and an OFL vice-president; and Ralph Ortlieb, who is one of our international representatives. We have also Louisette Hinton in the back, one of our international representatives.

Thank you very much for the opportunity to appear before your standing committee on Bill 79. Let me just tell you who UFCW is. UFCW Canada is the largest private sector union in Canada, representing over 170,000 members. In Ontario we represent 70,000 men and women, mostly in the retail food and packing houses, but we do represent more than 20 sectors of the Ontario economy, being the meat packing, brewing and beverage production. We are probably the largest union that represents more part-time people in the private sector and represents more women, because of being in the service industry and in the retail food especially.

UFCW Canada strongly supports implementation of employment equity legislation in Ontario and we wish to commend the Minister of Citizenship and the government for developing what will hopefully become a model for the rest of Canada.

I'm not going to read all my presentation. I'll bore you with some of the stats that you see in front of you, which really point out to you, I guess, the changing workforce that we live in and the world we live in, which is in constant and rapid change. I think major shifts have occurred and are taking place within Canada and globally. They have a great impact in the workforce, and Canada has always had a diverse population, but the trend is more pronounced today than ever before.

The largest percentage of Canadians are now of neither French nor English descent, nor a combination of both, I guess. I guess among industrialized countries, Canada has one of the largest foreign-born populations, with fully 16% from outside the country. That is the diversity of the Canadian population and the rapid change that has occurred.

I just want to point out to you that aboriginal people are the fastest-growing population in Canada. They also have the highest percentage of young people. That's why those factors bring together a new political impact among the aboriginal people.

Women: we know quite a lot about that in our union. They now comprise more than 50% of our membership, and in the year 2000 probably more than 60% of the workforce will be women and will be part-time.

The presentation we're making to you on Bill 79 is only on the act; it doesn't address the regulations. We want to turn your focus on really four issues that we want to address to you.

First, on page 1, is the seniority provisions; that's seniority, subsection 5(2). We would like to see an amendment to subsection 5(2) adding at the end of 5(2),



after "designated groups," "and are deemed to be part of any employment equity plan prepared in accordance with this act and its accompanying regulations." The purpose of this is very simple: We don't want any changes to occur through regulations; we want it to be in the act.

The second amendment we would like to see in section 5 is an addition, subsection 5(3), which speaks to, "Employee seniority rights that are acquired through a collective agreement or an established practice of an employer with respect to any term or condition of employment other than those enumerated in subsection (2) above," which is layoff and recall, "are deemed not to be barriers to the hiring, retention, promotion or treatment of members of designated groups, unless such seniority rights are found to be contrary to the Ontario Human Rights Code, or as decided by the Human Rights Commission."

The next section that we would like to see any amendments or changes to is section 19, where it talks about exemptions. Subsections 19(2) and 19(4) give us great concern. As you probably know very clearly from the Ontario economy, the proliferation of small businesses in Ontario is where all the jobs are created. By exempting 100 employees from employment equity requirements, it gives a great concern to us. We would like to see that changed, because it wouldn't reflect the workforce in the particular geographical area and the population that it serves. So we would like to see that changed, and the bill should include a statement in section 19 that the measurable and enforceable composition goals and timetables approved by the commission cannot be modified by regulation or otherwise. That's the change we would like to see in 19.

Subsection 28(2) describes the power of the tribunal, and it says it may "make any order it considers just." We believe that under the complaint-based model, the tribunal's power should be restricted to dealing with specific issues brought before it, not anything else, and the tribunal should not interfere with the contents of the collective agreement or collective agreements unless as a last resort, where it considers that other remedies will not counter the effects of the contravention. For that amendment, we would like you to look at language that was put in Bill 40, the Ontario Labour Relations Act that was amended, clause 91(4)(d).

The last point we would like to make on employment equity is to section 46, which is the appointment of the Employment Equity Tribunal. We believe that it's an important part of Bill 79. The structure, composition, powers and functions of the tribunal should be defined in Bill 79 and not in the regulations. That's why we believe that subsections 46(2) and (4) should be amended, and on page 3 we give you the amendments that we'd like to see, that "The Lieutenant Governor in Council, after consulting with representatives of man-

agement, trade unions, organizations representing each of the designated groups and the commission, shall appoint the members of the tribunal." We say that "The members of the tribunal shall select one or more of their members as vice-chairs."

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In addition, the composition of the tribunal should be specified in Bill 79 as follows: "The tribunal shall be composed of 18 members who shall represent one or more of the following; at least nine of whom are women or at least nine of whom are members of designated groups other than women or at least nine of whom shall be representatives of trade unions." We're looking for a mix, and that's what we're looking for.

That is our presentation, our submission to the committee.

The last part, on the panels of the tribunal in section 47, we believe that the panels appointed by the chair must be of at least one representing business and one representing labour, and it shouldn't be only a one-chair panel.

**The Chair:** Okay?

**Mr Kukovica:** That's it. We're ready for questions.

**The Chair:** Very well. Thank you, Mr Kukovica. Ms Witmer, six minutes.

**Mrs Witmer:** Thank you very much for your presentation. You've indicated here that the composition of the tribunal should be nine women, nine members from the designated groups other than women and nine people from trade unions. I guess what I don't see mentioned here is the fact that the majority of workers in this province are not represented by trade unions. Do you not see them as having an important role in the process whereby we would determine employment equity?

**Mr Kukovica:** Well, it goes back I guess to the same problem: Do trade unions represent not only organized workers but workers in general? We believe that trade unions do represent all of the workers in the province.

**Mrs Witmer:** I would disagree with you. We've certainly had individuals appear before us who are not members of unions and feel that they would like to be represented and have the opportunity for some consultation as well. I think if we're going to be indeed fair and equitable, we need to really be sure that there is a role for those people who are not represented by trade unions, and I would hope you'd give that some consideration.

You've also mentioned here—

**Mr Kukovica:** Just on that area, it always boils down to the same problem: If a person comes here and he's not a representative of an association or of a profession, then he's representing himself; he's not representing any constituency. That's what we believe.

So we believe that the labour movement can represent all workers, be it unionized or non-unionized.

**Mrs Witmer:** I think if you were to talk to employees, you would find that many of them have found a mechanism whereby they can negotiate with the employer outside of the trade union movement. We keep using that as an excuse, but I think it's quite unfair to do so.

Do you believe that merit should be a principle which we should be supporting within the employment equity legislation? Should it be given primacy and included?

**Mr Kukovica:** I'll have Ralph answer that question.

**Mr Ralph Ortlieb:** I don't see anything in the act that talks about taking merit away. We think in the trade union movement that we deal with the question of qualifications, and we think that's prime in the act. We don't expect employers or trade unions or anyone else to be forced to hire people who don't have the qualifications. Qualifications are merit; I don't know why you're talking about merit.

**Mrs Witmer:** Do you know what? It's one and the same.

**Mr Ortlieb:** It's one and the same, right?

**Mrs Witmer:** That's right.

**Mr Ortlieb:** So finally, when we get down to it, the trade union movement, even in our seniority, key to our seniority problem in any instance is qualification. People don't get jobs just because they have seniority; you have to have all the functions of seniority. The key point in that is the question of qualifications, ability, merit, whatever you want to talk about. What we are opposed to is the employers or any other group saying they should have the inalienable right to determine qualifications based on their subjective opinions. That we don't find.

To answer your question about merit, yes, we think merit should be in it. Whether it should be a prime function of employment equity—we don't think so. There are a whole bunch of other things. But we should have some sort of way—and there's never been any, at least from the trade union movement, to my knowledge and I've been in it from the start—of taking qualifications out of the competition, where the best person, whether black, a woman, white, aboriginal, whatever, if he's got the equal qualifications, then he should have a shot at it. If he's got better qualifications, he should be hired.

**Mrs Witmer:** I guess the comfort level of people throughout the province probably would be increased if the government was willing to publicly state that. That's been a concern that's been expressed.

**Mr Ortlieb:** Just let me add one more. In all of my dealings with the government and with the commission, in fact, they've always said that one of the primary responsibilities of this is to make sure the best person

got the chance for the job: merit, qualifications, ability, whatever you want to call it. I've seen nothing out there where the commission or the government says you just hire anybody off the street. I haven't seen that.

**Mrs Witmer:** No, but there is something else going on that certainly leads to some fear.

**The Chair:** There's time for one quick question.

**Mr David Tilson (Dufferin-Peel):** The issue of seniority rights has been raised by various members of the union movement at these proceedings and yours is similar to most of them. The comments by the NDP and those supporting the legislation say that, of course, notwithstanding what they say about collective rights or collective bargaining, by following what you're suggesting, the seniority philosophy will be attacking the position of women and visible minorities and aboriginals and disabled—their very chance for promotion. In other words, the seniority-rights clause that you're talking about is in itself discriminatory.

**Mr Ortlieb:** Let me tell you, there is no question that there are some seniority clauses that are a bar to advancement. There's no question about that. Where they are, they should be taken away. There's no question.

I know seniority clauses where the employer has the exclusive right to determine physical ability, mental ability, and unions have not been able to negotiate that away. I say if they can't negotiate it away, legislation should take that away. No employer or anyone should have those rights. But we have done a tremendous amount of discussion with our local unions across the province of Ontario, and we have the four target groups in our membership. We talked to them and very few, if any, of them would want to do away with seniority. It protects the rights they've earned with the employer.

**Mr Tilson:** They say that fact alone is discriminatory.

**The Chair:** Mr Tilson, sorry, but we've run over time.

**Mr Fletcher:** I thank you for your brief and I know the hard work that UFCW has put into employment equity in their own places. I have basically two questions and one is on seniority. Mr Ortlieb has already answered that part of it about there being some times when seniority does become a barrier to employment equity and to the promotion and hiring of people. Other than the Human Rights Commission, which could be a long, drawn-out process, I was just wondering if there's another way we can get around it, other than going through the human rights? Is there something we can put into the act that would do something about seniority?

**Mr Ortlieb:** Once again, I'm going to ask my colleague to make a comment on that too.

It appears to us that the Human Rights Commission



is now developing some precedents, some jurisprudence, in relation to collective agreements and in relation to human rights generally.

We support the human rights dealing with these issues. I say that with maybe one or two reservations. Generally, the decisions of the Human Rights Commission in its dealings with trade union movements have been right on the mark, from our opinion, in the question of religious freedom and seniority and all of the other things.

We don't know whether we need to have another bureaucracy built. We understand the commission. We want a commission with strong powers, good, well-trained people to go out and do much of the work that should be done. On the other hand, to create another tribunal which would in most instances be, we would think—we would be able to appeal to the Ontario Human Rights Commission in any event. The one thing that concerns us about the Human Rights Commission is that you get a long beard before you get a decision. It takes a long time. They have some problems; I understand that they're trying to be rectified. But it has to be done a lot faster.

1350

Pearl may have some comments on the human rights.

**Ms Pearl MacKay:** I'd just like to say, just on the whole issue of seniority in particular and being one of the members of the designated groups under employment equity and having experience in the labour movement, one of the things I have benefited from as an individual in my workplace has been having seniority. The problem is getting the foot in the door. Once you have the foot in the door, what's essential is that we all have the rights to seniority so that there is fair and equal treatment.

The benefit of that is essential, so that people who don't get promotions etc for "preferences" or based on who you know or who you may be related to—what's essential is that your time served is counted for something, no matter what target group you're in.

**Mr Fletcher:** Let me put a question to you, Pearl, as direct as possible. Were you hired because you're a woman?

**Ms MacKay:** No.

**Mr Fletcher:** It was because you can do the job?

**Ms MacKay:** Are you talking about the job I'm in now?

**Mr Fletcher:** The one you're in now—your advancement through the union.

**Ms MacKay:** I was hired for my abilities. There may have been some, in terms of the labour movement—this is a full-time labour movement position—to increase the representation of women. I've been on staff, though, for 10 years.

**Mr Fletcher:** The reason I asked that is because I know that, through the labour movement—and you look at collective agreements—long before there were rules and regulations saying things about discrimination or anything else, collective agreements contained these articles long before governments even began to act. I know how far ahead of what is going on is where the union movement has been.

**Mr Callahan:** From the sounds of what you're saying—and I hope I'm not misinterpreting this. I'm getting the impression that you're saying that within the union movement this bill is not necessary because this is the practice that you've followed throughout your history in organized labour. If that is the case, can you tell me how many people within your particular union are women, disabled, aboriginals and visible minorities who are in senior positions within the union?

**Mr Kukovica:** You would have to understand, I guess, the way we operate UFCW of Canada. We have over 130 local unions where we have presidents, chief stewards and so on, and we probably have more chief stewards in the local unions who are women.

**Mr Callahan:** What I'm looking for is, do you have anybody in a presidential capacity in that union who is either a woman, an aboriginal, a visible minority or a disabled person?

**Mr Fletcher:** They're elected; they're not hired.

**Mr Kukovica:** That's right. We do have full-time representatives who are women, no question about it. I wouldn't be able to tell you—

**Mr Callahan:** But nobody in a top category thus far, I gather; that's your answer to my question.

**Mr Kukovica:** No, I'm saying to you that in our local unions we do have presidents of local unions who are women because, again, our structure is that they have to be elected by the membership. So whatever the composition of their membership is, we do have women who are presidents or secretary treasurers of local unions.

**Mr Callahan:** The way I understand the purpose of this legislation is that this government is saying that women, disabled, visible minorities and aboriginals have been denied access, even though they have the ability, to those positions, or an opportunity to move up the ladder to a position of authority.

On the other side of the coin, you tell me in the unions that seniority is sacrosanct. That tells me, and maybe I'm wrong, that because of seniority, particularly with your suggestion of enlarging this definition, there's an immediate block there because people, as competent as they may be, although they get a foot in the door, are not going to move up the ladder until they have had a longer period of service than the person ahead of them who may not be more competent than they are. Is that correct?

**Mr Kukovica:** That may be correct in your view. What we are saying is that it's not going to change tomorrow morning. The composition of the workforce, because you are introducing Bill 79, is not going to change tomorrow morning. It's going to take at least 10 or more years to change that. We don't have hiring halls. UFCW does not have hiring halls. We don't hire; it's the employers that hire.

**Mr Curling:** But the purpose of it—

**Mr Kukovica:** And the purpose of it is, through the hiring process, to reflect the workforce and the community it services. Go to a retail food store that we represent and look for yourself how many you have; how many women. Sure, they're all women. It's almost a ghetto. That's one of the things we're working to try to get them out of the cash and get them into more meaningful jobs through training, retraining, upgrading of their skills so they can move on to being a baker, a meat-cutter or something else.

It's going to take time to change that. We don't hire, so it has to be a joint venture between the employer and the union to be able to hire people according to the composition of the community that you want to service and the workforce. So it'll be a very slow process.

**Mr Callahan:** Is there more time left?

**The Chair:** One last question.

**Mr Callahan:** You better do it then.

**Mr Curling:** The purpose of legislation, of course, is that some of the voluntary procedures have not worked; the whole reason we're here. You have articulated very well that there are people who are being excluded out of the workforce. If we only deal with employment equity as access to the workplace, we haven't solved a thing. We must have access coming up.

**Mr Callahan:** Seniority isn't one of them.

**Mr Curling:** You can put the word "seniority" in there afterwards if you want. My question to you, though, is completely different.

I want you to comment on the fact that those companies that are having 50 and under are excluded from this. Do you think this is right, or was that a recommendation? You said you sat on this consultation committee with the minister etc. Was that in there and it was taken out? Do you feel it is right that they've excluded that?

**Mr Kukovica:** No, we feel it's wrong. That's why we are making a recommendation to change it. We're saying specifically that we don't agree with that and if it were only for us, we would recommend 10; any workplace that has 10 or more should be included in employment equity because we feel that's where most of the new jobs are created—in a small business.

**The Chair:** Mr Kukovica, we have run out of time. I want to thank you and the other members of UFCW for taking the time to participate today.

#### ONTARIO FEDERATION OF LABOUR

**The Chair:** Ontario Federation of Labour: Welcome, Ms Davis and Ms Veacock. You have half an hour. You may want to leave plenty of time for questions and answers. We feel that is the best way we can communicate with each other, so you can leave as much time as you like for that.

**Ms Julie Davis:** What I'd like to do is just read the opening seven pages of our submission, leaving the more extensive recommendations to be dealt with during the question and answer period. I want to thank you for the opportunity to appear here today.

The Ontario Federation of Labour, representing over 700,000 working people in Ontario, appreciates this opportunity to appear before this committee to present our position on Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women.

In this submission we will tell you why we support employment equity legislation, give you a sense of how long we have been lobbying for legislation and, finally, make recommendations which we believe will strengthen Bill 79.

First, we want to commend the government for putting this issue on its agenda. We are fully aware of the strong opposition to legislation to remedy systemic discrimination. Indeed, some of our members, due to a lack of information and the prevailing myths of employment equity, are opposed to Bill 79.

1400

We have observed also that employment equity myths and irresponsible scaremongering are often perpetrated by those who should be better informed. We disagree with the tone and the information and the arguments presented by some members of the opposition during the employment equity debate. We hope that this process will better inform not only the members of this committee but all who attend or read transcripts from these hearings.

Why we support employment equity legislation: There are two very fundamental principles of the labour movement. These are fair shares and solidarity. But we know that many in our society are denied their fair share. We know also that when workers are divided by race or gender, all workers lose. As representatives of working people, we feel strongly that we have a responsibility not to condone nor to ignore the discrimination that some of our members and potential members experience.

There are laws today in Ontario to protect people from discrimination, yet some people continue to deny that we live in a society that condones racist, sexist, homophobic and discriminatory conduct. It ought to be recognized that we live in a society that places a premium on white skin and the male gender. Routinely,



we make assumptions about the ability of others even as we deny them opportunities to demonstrate their competence. We talk about reverse discrimination while we ignore nepotism and favouritism, and we talk about a lowering of standards, mainly in reference to visible minorities, while we ignore government and other statistics to the contrary.

We reject the notion that employment equity is reverse discrimination and ipso facto that standards will be lowered because of legislation. These assertions often shield racist and sexist views, and they fail to take into account employment data available to the contrary.

The OFL supports employment equity because it is a systematic approach to a systemic problem. We believe that effective employment equity legislation will ensure to some extent that workers are hired on their ability to do the job without regard for skin colour, gender or disability. Legislation will allow those to whom doors have traditionally been closed to demonstrate their competence.

We have a long history of support for employment equity legislation. Generally, our federation has a history of lobbying for legislation for the protection of workers and their families in Ontario. In reviewing our files and policies for this presentation, we have noted that since the early 1970s, several briefs and oral presentations have been made to governments in Ontario regarding improvements to the Human Rights Code and to the Employment Standards Act. Our support for effective employment equity legislation is part of our tradition of struggle to protect the rights of workers and their families.

As early as 1963, OFL convention delegates passed a resolution which called on the Ontario government to "enact legislation to encourage industry and other employers to hire part of their labour force from the handicapped group of workers, including people with epilepsy."

Since then, a number of resolutions and policy papers have been endorsed. In 1982, or just over a decade ago, delegates to our 1982 convention passed a comprehensive policy paper, *Women and Affirmative Action*. This paper outlined in detail the historical discrimination of women, discrimination which has kept women out of certain sectors of the labour force, marginalized them in others and trapped them in job ghettos. The plan of action of this policy paper included a demand for legislation to end gender segregation in the workplace.

By 1987, the OFL had extended its support for legislation to include aboriginal people, people with disabilities and visible minorities. That year another policy paper, *Equal Action in Employment*, was endorsed by delegates to our convention. Again we called on the government to introduce legislation to remedy systemic discrimination.

During the 1988-89 period, the OFL and several of our largest affiliates plus community groups worked with Bob Rae, who was at that time leader of the official opposition, to develop Bill 172. Through an often difficult process, a process where community and labour compromised and negotiated, there was in the end consensus that Bill 172 would be an effective piece of legislation to remedy and ameliorate systemic discrimination.

In 1991, the OFL was one of the first presenters to the consultations held by the Employment Equity Commissioner. We informed the commissioner of the work we had done around Bill 172 and indicated that our vision of effective legislation had not changed. Indeed, we said we would like to see the legislation be similar to Bill 172.

While we have been actively lobbying for legislation, we have not neglected to work with our affiliates to build support for employment equity at the shop floor level. The OFL has organized several employment equity conferences, we've had forums and educationals across the provinces, and while I would say that much has been done, I would also agree that much still remains to be done.

But without effective legislation, workers and potential workers will continue to experience racism, sexism on the job and severe discrimination in hiring if you are disabled because employers are generally reluctant to accommodate people with disabilities.

While we commend the Ontario government for bringing forward legislation, we also want to go on record by saying that it is not enough to enact legislation; legislation with mandatory teeth is the key to real change.

In essence, the bill is a statement of aspirations which provides a framework for the legislation while it leaves the essentials of employment equity and implementation details to be addressed by regulations.

For instance, two fundamental principles of employment equity are numerical goals and timetables in which to achieve those goals. But while subsection 50(2) of the bill contemplates numerical goals determined by commission-approved percentages, regulations that we have seen would allow employers to set goals and only require them to make "reasonable progress" towards representation of designated group members, and these goals must be "reasonably" achieved in good faith.

As well, while section 11 of the bill provides for timetables both for the elimination of barriers and the composition of the workforce, there is no mention of timetables in the regulations.

Surely this is not mandatory employment equity. This is another voluntary approach, and our very real concern is that it will not ameliorate systemic discrimination in

employment. In order to achieve the objective of equality in employment, Bill 79 must be amended.

In particular, it must be amended to require employers to negotiate plans with goals and timetables for achieving the goals. The commission must be charged with the development of standards for these goals and timetables. And, as I commented earlier, we have attached other recommendations to amend Bill 79.

In conclusion, we're here today to say it's time for justice. We have had the studies and the consultations. The evidence is irrefutable. People are not hired solely on the basis of ability; other discriminatory factors such as gender, race and perceived limitations are still given far too much weight. Now it is time to act responsibly.

We know that some have raised concerns regarding the state of the economy and employment equity. Our response cannot be that we fight discrimination only in good times. Indeed, some in our society never, ever experience the good times. We must prepare now so that when the economy turns around, employers will be required to hire fairly.

In addition, it should be understood that even in times of recession, with a shrinking job market, gender or race ought not to determine who gets hired.

Employers no doubt have argued how costly implementing employment equity will be. Indeed, this is an old refrain of business. This argument has been used to protest the introduction of every piece of legislation to protect the interests and rights of working people and their families. They must be reminded that we need legislation precisely because they have not hired fairly, and we must respond back by asking the question, how much does it cost to hire fairly?

This government must accept the challenge of making amendments to Bill 79 if the groups targeted for employment equity are to receive justice under this legislation. We believe profoundly that if this government does not strengthen this legislation to make it meaningful, no other government will.

We support this legislation, but it must be amended to achieve its objectives. At stake is justice: justice for aboriginal people, justice for people with disabilities, justice for visible minorities, justice for women and the right for all of those groups not to be discriminated against in employment. Bill 79, if amended, we believe can ensure that justice.

Then in our brief you will see our recommendations along with our rationale under each recommendation and an outline of the bill with our recommendations on the right-hand side.

**The Chair:** Thank you. We'll begin with the government members. There are two speakers, Ms Carter to begin.

**Mr Callahan:** How much—

**The Chair:** Seven minutes.

**Ms Carter:** I appreciate your strong support for this legislation and your explanation of why it's necessary. We have had presenters who have claimed that there was no need for this and that things would automatically put themselves right and were in fact doing so.

Specifically, I'd like to raise the question of small businesses. I think we all want this legislation to be as thorough as possible and to eliminate unfairness to the greatest possible degree, but I think when you're looking at small employers there are some very real problems. For example, these employers would not have the resources a large company would have to research what their representation should be and so on, and also I think from a sheer mathematical point of view there are problems. You would find that the statistical representation of a given group was zero and where do you go from there, or you can't hire a fraction of an employee, and in any case, if the turnover is fairly slow, then it becomes difficult to see how some employers could implement these provisions. Also, I believe there's a growing number of small ventures which are in fact initiated by women or by members of minorities or the other groups which might make it a little less urgent. I just wonder what your comments on that would be.

1410

**Ms Davis:** I think we have an understanding of the problems of small business, but on the other hand we also know that small business is where jobs are going to be created in the future, and if they're excluded, we're very concerned that the kind of systemic discrimination that exists now will continue. We believe that ways can be found to overcome those problems and allow us to move forward, and one of our recommendations is in fact that the bill be extended farther down the chain so as to make the workplaces of Ontario, both today and into the future, more representative of the population as a whole.

**Ms Carter:** Can you give any details as to how you would apply that to small businesses?

**Ms Davis:** You would do it in the same way that you would do it for a large business. It's like pay equity. Pay equity was a lot simpler for small business than it was for a large business because you had fewer classifications to deal with, and the same thing would be true here.

Again, in talking to our affiliates, and I know the Steelworkers have already been here, they feel very strongly about this. A lot of the companies they have organized and are continuing to organize are in fact small businesses, and they believe that with the commonsense approach, sitting down with the bargaining agent and the employer, solutions can be found to these problems.

**Mr Winninger:** In your presentation and recommendations you suggest that employment equity plans



should be developed on a bargaining unit basis, so I'm wanting to ask you how that approach—

**Ms Davis:** That's not one of our recommendations.

**Mr Winninger:** Oh, I thought it was. It's not?

**Ms Davis:** No, I think that was a recommendation from one of our affiliates, but that isn't part of our—

**Mr Winninger:** So you don't adopt that as your own?

**Ms Davis:** That isn't one of our recommendations.

**Mr Winninger:** Maybe I could pursue this one with you anyway. We have situations where there are barriers between bargaining units, such as the CUPE situation where you have the inside workers and the outside workers and a complaint to the Human Rights Commission by women who were excluded from hiring in the outside local. Is that the kind of situation that might have led you not to adopt that recommendation of the affiliate as your own?

**Ms Davis:** The way the federation works is that the things that all our affiliates can agree to are the presentations that we put forward. There are differences of opinion in the labour movement around that particular issue, but I think it gets dealt with in any event using the Human Rights Code question. If it's a seniority system that's responsible for that, if the seniority system violates the provisions of the Ontario Human Rights Code, then our position is it needs to be looked at and the parties need to sit down and find ways to deal with it.

**Mr Winninger:** Is there time for one more question?

**The Chair:** There is, in fact. Ms Akande wanted to ask a question as well.

**Ms Akande:** One of the points that you make very well in this presentation is that there is a great deal left to be done and that the legislation should be stronger. The argument has been put by some, though it's not the side that I'd be on, that if in fact this legislation—when this legislation—passes, it will act as a base for the improvement and perhaps the strengthening of the legislation at some later time by some later government. What would be your response to that?

**Mr Callahan:** They've said in the brief no other government—

**Ms Davis:** It said in the brief actually that we believe that if this government doesn't do it, no other government—

**Mr Callahan:** That's rhetorical—

**Ms Davis:** No other government that might come into play here in this province would make it any stronger is our belief.

**Mr Callahan:** I'm just newly on this, so you'll have to bear with me, but as I see this, an employer is required to put together a plan that will open the door to the people who are in the designated categories. What

I want to know is, if in the course of that plan someone who was brought in in that way retires or whatever, does that require the employer to bring in someone of the same designated category to take that person's job? If that is the way it works, that flies right in the face, in my view, of the unions' whole concern about seniority, because it means that somebody's going to sort of jump up the ladder to fit into that category that has been vacated by that person resigning. Have you thought about that?

**Ms Davis:** Well, I think the answer to your question is not necessarily that—the employer should be required to maintain employment equity within the composition of the workforce. It doesn't mean every single time that somebody retires, because there may have been hirings in other classifications or in other jurisdictions that deal with that particular target group, so it's not a question of any one particular of the target groups having the exclusive right in perpetuity to a particular job. What would be and should be required is that the employer maintain employment equity, meaning that the mix of the jobs in that particular workplace is reflective of their numbers in that geographic area.

**Mr Callahan:** But you'll agree with me that it is certainly conceivable that this could be the case, and what I say to you is, what impact does that have on the question of seniority? In fact, I find the argument of seniority is as much an impediment to access by these groups as has been the suggestion, and perhaps in many cases a realistic suggestion, that these people have been denied access or promotion up through the ranks, particularly women and visible minorities, to a senior position. But it seems to me that seniority—if I understand seniority correctly, it means if I'm hired tomorrow and you were hired yesterday, you should have a better chance of not getting bumped, or of my getting bumped before you. That's seniority, isn't it?

**Ms Davis:** Well, yes, but I would argue that if seniority was the barrier that some people try to make it out to be, we would see much greater representation from target group members in unorganized workplaces than we do. The reality is that a strong seniority system can in fact help advance target group members, and at least two of the target groups anyway, visible minorities and women, are oft-times in the workplace, but if they had stronger seniority systems they could in fact move up. The problem of aboriginal people and people with disabilities is that they're not there to begin with, so it's a question of hiring. Seniority doesn't enter into the hiring practices of employers, or in very few cases. I suppose one could argue that the building trades, which have hiring halls, are an exception to that, but in the vast majority of workplaces in the province of Ontario, seniority has nothing to do with hiring.

*Emergency alarm sounded.*

**Mr Callahan:** A fire. That means we have to get out.

**The Chair:** It's not us.

**Mr Callahan:** You mean this part won't burn if the other does, eh?

**The Chair:** We'll finish the deputation.

**Ms Davis:** June wants to add to this.

**Ms June Veacock:** I'd like to remind the committee that seniority's not for whites only. You have large numbers of visible minorities with seniority provisions and even with seniority don't have access to higher positions. So we have argued in the past that what we need at times is the strengthening of seniority so that when the racial minorities train white, able-bodied males, they don't see them get the position while they remain where they are. So just keep in mind that seniority is not the problem; it is the discriminatory hiring practices of employers. That's the problem.

**The Chair:** One further question.

**Mr Curling:** First, I want to say that I really enjoyed your presentation and you're quite focused in some of the concerns that I have too in this employment equity. I don't agree with everything here that you say. I still am not convinced that employment equity—

*Emergency alarm sounded.*

**Mr Callahan:** The fire is catching up to us, I think.

**Mr Curling:** I'm still not convinced that seniority doesn't play as an impediment. As a matter of fact, almost a bit of systemic discrimination could happen. That's what the bill is all about itself, whether it protects blacks or it protects women or so on, the law must be fair that it does not block the fair process of people moving up in their area.

I just wonder, could you comment a bit more, because I have a concern about this, on The Human Rights Commission and the duplication that happens within employment equity, and whether or not we should make sure that the role that the Human Rights Commission plays or the role that the Employment Equity Commission plays—or whether we should have a tribunal of equity commission to deal with inequities that are happening in our society?

1420

**Ms Davis:** I think that's an issue that's under active discussion. I certainly am aware of the Cornish report to the government which proposed exactly that, that there be an equity tribunal, if you like, that deals with all of the issues. We haven't taken a position on that, but it's certainly one that we're quite willing to have a discussion on.

*Emergency alarm sounded.*

**The Chair:** It's still on the third floor.

**Mr Tilson:** We've got another floor to go.

**Ms Davis:** We're close to the west doors so we'll be okay.

**The Chair:** Continue, Mr Tilson.

**Mr Tilson:** I have one question with respect to the self-identification, but I will say my dismay at your comments, Ms—sorry, I forget your last name.

**The Chair:** Veacock.

**Mr Tilson:** Ms Veacock. The comments that are made by the preamble in the bill and particularly your statement on the bottom of page 2 which says, "It ought to be recognized that we live in a society that places a premium on white skin and the male gender": I will say that I find that very offensive and I find it very inflammatory, as it suggests things about our society that I simply say are not true.

The question that I have for you with respect to self-identification is that there's no question that we're into a recession, jobs are hard to come by, people are losing jobs, businesses are closing down. This bill of course ensures that the workforce matches the workers in their workforce with respect to gender, with respect to race and with respect to disability, and of course the aboriginal. In the Metro area, the employer would have to make sure that about half of all employees are women, 15% are visible minorities and 3% are disabled.

My question, of course, has to do with self-identification, because the pressure is going to be on a great number of people. Specifically, there are groups that have not considered themselves to be non-white in the past—Greeks, Arabs, Israelis and maybe other groups—who now, because of the pressure to maintain those jobs, will be ticking off that box that says that they are non-white.

The same goes with disability. The criticism has been that we don't know what disability is. And I've made the comment in these hearings before that the Human Rights Commission says that the three of us who all wear glasses are disabled. That's what the Human Rights Commission says.

My question is—and of course there's no appeal—

*Emergency alarm sounded.*

**Mr Tilson:** —are we to the second floor yet?—there's no appeal to that by the employer.

My question is that I would like you to comment on those criticisms of this bill by the people who have said those things.

**Ms Veacock:** I don't understand why there would be pressure to maintain their jobs. My understanding of Bill 79 is that it doesn't contemplate laying off employees to make room for other employees, so I don't know why there would be pressure to maintain their jobs.

**Mr Tilson:** Well, because they're going to have to put a plan forward, and if they don't have that plan, if



they don't match that percentage—and section 50 doesn't even tell us what it is; it's going to be set some time in the future as to the regulations. We don't even know what those percentages are. But some time in the future the commission is going to say, "Sorry, your plan doesn't meet what the percentage is in that particular area."

**Ms Davis:** And if there's been no hiring during the period of time that the plan has been in effect because of the recession or whatever else is going on in that particular sector or industry, then that's the answer. I mean, it isn't contemplated, I don't believe, by the government, and it certainly isn't contemplated by the labour movement, that this legislation should be used to displace existing workers. We have never said that, never supported that and never would support that.

**Mr Tilson:** My question is on self-identification, the fact that people can say they're something when they're not. That's the criticism that's been given to this bill. And there's no appeal from that.

**Ms Davis:** I think that makes light of a very serious problem. To suggest that people would do that, I find as offensive as you find our earlier comments. To suggest that somehow people would trivialize their race or their disabilities by pretending that they're something they are not—the logic of that escapes me completely, I must tell you.

**Mr Tilson:** Well, we'll talk about glasses. If I can't get a job and I want to get a job and I know that the law says that my wearing glasses—if your wearing glasses makes you disabled, you're going to tick off the box "disabled."

**Ms Davis:** I don't know that there's any indication to say that the commission is going to establish that wearing glasses means that you're disabled.

**Mr Tilson:** Check with the provisions of the Human Rights Commission, because it has said that.

**Ms Davis:** I believe for some jobs wearing glasses would be a disability, absolutely: hockey players or something like that. But that isn't what we're talking about here.

**Mr Tilson:** I don't mean to trivialize. This whole subject is very serious because of the uncertainty, and that has been made by all groups. The uncertainty of this legislation is terrible. People don't know how to interpret what is being said by this legislation or has yet to be defined by this legislation. Those are my questions.

**Ms Veacock:** I just wanted to say also that I'm not surprised that you would be offended by the term "premium on white skin" in the agenda. I'm not at all surprised.

**Mr Callahan:** He fits the category.

**The Chair:** If you have one question and it's short, we can take it.

**Mrs Witmer:** I think it's become quite apparent that this is a very contentious piece of legislation, and I think there needs to be a genuine commitment by all of the partners to ensure that there is fairness and equity in the hiring and promotional practices in this province. But I think we have to be very careful, because what we're seeing, it seems, on a regular basis is we seem to be in confrontation one with the other. I think that's what's creating the uncertainty throughout the province.

Certainly, if you take a look at the preamble here, it indicates that all discrimination is the result of intentional and systemic discrimination by employers. It fails to totally acknowledge that underrepresentation of the designated groups in the workplace results from the historical, the social and the demographic factors as well. I guess I would ask you, do you acknowledge that there is underrepresentation as a result of those factors?

**Ms Davis:** Yes, because of some of those factors, but overwhelmingly the evidence shows that systemic discrimination is the major factor.

**Mrs Witmer:** By who?

**Ms Davis:** Who does the hiring? Employers do the hiring. Ever since, as my friend Gord Wilson says, the Bible was a 10-page flyer, they do the hiring. With very few exceptions in this province or anywhere else in this country do unions or anyone else have any say over who gets hired. In fact, despite seniority clauses, there are very few workplaces and very few collective agreements where seniority is the only grounds for advancement or for promotion. In most cases, seniority is a factor and not the factor. So, again, there's no evidence to support that seniority is anywhere near the problem that some people would make it out to be.

**Mrs Witmer:** I think it's unfortunate to put all the blame on the employers—

**The Chair:** Thank you. We've run out of time, Ms Witmer. Sorry. Ms Davis and Ms Veacock, thank you for your presentation and your participation here today.  
1430

#### EPILEPSY ASSOCIATION, METRO TORONTO

**The Chair:** The Epilepsy Association of Metropolitan Toronto. Welcome, Mr Rapson. You have seen the previous delegation in terms of the process. It's half an hour. Leave as much time as you like for questions and answers. You can begin as soon as you're ready.

**Mr Marty Rapson:** Thank you very much, members of the committee. My name is Marty Rapson. I'm a member of the Epilepsy Association, Metro Toronto, and the chairman of its community advisory committee.

We commend the present government on the current progress of Bill 79, especially in regard to soliciting the consumer input that is going on especially today and this past week. The passage of this bill and its effective implementation are critical if we're going to achieve equality in employment in Ontario.

People with epilepsy face rampant discrimination in employment. My community advisory committee has some comments that we feel are going to aid in the success of Bill 79 and hopefully restore some of the employment opportunities that have been lost to us through this discrimination. I'll start with the definitions, so you might want to keep your pen handy, Mr Tilson.

**The Chair:** Poised.

**Mr Rapson:** Entrenching the definition into Bill 79 is, we feel, essential in order not to place it in jeopardy through court challenges by employers. Time delays for resolving these cases could prevent effective work being done by employers in the meantime. Having the definition within the bill itself could be significant in strengthening the interpretation of the other areas of the act. As well, entrenchment would be considered an important milestone for persons with disabilities.

We endorse the wording of the definition as set out in the regulations currently and would add that there will be a need to provide education to persons with disabilities themselves in the community regarding the actual meaning of the definition and how to determine if it applies to their particular circumstances. This responsibility should not fall solely upon the shoulders of the employers who are performing the workforce surveys. This is a responsibility also of the commission and community groups such as our own.

Moderate to severe disabilities: We note that the provisions of the current act particularly leave untouched the employment needs of those persons with moderate to severe disabilities. The situation of persons with moderate to severe disabilities creates a special need above and beyond those addressed by these principles, and while it would be our preference to have those needs addressed in this act, we support the concept of an Ontarians with disabilities act which would directly address those needs. We would like to see some support in principle for an ODA written into Bill 79.

Accommodation: Clarification and inclusion are required in the act that makes it clear that the "reasonable efforts" the employer is required to take are equivalent to that of the "undue hardship" standard that is required under the Ontario Human Rights Code. Otherwise, there exists the significant potential for the weakening of protection for persons with disabilities.

Public access to plans: It is important that plans be public, beyond just posting within the workplace. Of course, the relevant communities are not within those workplaces. If needed, the commission could provide guidelines on what is permitted to be disclosed for confidentiality or for competitiveness purposes, and these cases could be addressed on a case-by-case basis.

We feel that this access would take some of the burden of policing the act off the commission and perhaps save a little bit of money. I'm sure Premier Rae would like that idea.

The commission itself: It is important that the commission be properly funded and mandated in order to ensure that significant positive changes are achieved with respect to employment opportunities for persons who have, until now, been deprived of the quality of life which comes from participating in the workforce.

In conclusion, I would like you to know that these comments were put together by people on our community advisory committee, people who have a seizure disorder, people who at one time or another have lost a promotion, lost a job, lost the opportunity for employment because of their disability. It is up to you, as legislators, to make Bill 79 a strong one and to make equality in employment a reality. Thank you. Any questions?

**The Chair:** Thank you, Mr Rapson. Seven and a half minutes or so, Mr Callahan to begin.

**Mr Callahan:** I didn't have your written brief right at the outset but I now have it. Are you saying that the definition of "epilepsy" should be definitively defined in the act, is that what you're saying?

**Mr Rapson:** What we're saying is that now it's in the regulations, and the definition that is proposed for the regulations is that of the federal Employment Equity Act.

**Mr Callahan:** Okay. I guess the reason for that is the same as a person who, let's say, has a learning disability and is not about to go in to the employer while he's applying for the job and say, "Well, I've got a learning disability; would you please hire me?" or this person is not going to go in and say, "I've got epilepsy and I'd like you to hire me."

**Mr Rapson:** Actually, we weren't even considering that sort of scenario. The reason we wanted the definition entrenched in the bill itself was to actually make it law. When something is just in regulations it can be changed without having to go through the House.

**Mr Callahan:** Right.

**Mr Rapson:** Also, I said the symbolic gesture of entrenching it.

**Mr Callahan:** But you would agree with me that in this province we have freedom of information legislation that doesn't allow anybody to reveal anything about you, and we have tremendous ads on television about people who have suffered a psychiatric problem and are being sort of shunned by the public and we try to educate people not to do that, and yet here we're requiring people, if they're to take advantage of this legislation and are to have the benefit of it, to actually come out of the closet, as it were, and say, "I've got a



learning disability or I'm receiving psychiatric treatment or I'm an epileptic" or whatever.

That to me is offensive, and in reality I don't think people will do that. The net result is that they won't get any benefit, at least within that definition, and I'm sure it's broader than that, from being able to take advantage of this legislation.

The thing that really bothers me, and I'm going to say this and it's probably going to get me in a lot of trouble: I'm old enough to remember when, in this province, Jewish people couldn't join golf clubs. There wasn't a government of the day that passed legislation to say you've got to join the golf clubs. That was resolved through court decisions. I can remember when, to be a policeman in this community, you had to be six-foot-two, white, Anglo-Saxon and Protestant, and that again is no longer the case. I can remember when the question of religion was also a significant thing.

I think that governments have a responsibility to act, and the United States is a clear example of it. When you've got a history of black people being burned, murdered and everything else—the United States took far too long as a government to bring in civil rights legislation. But I really find it somewhat frightening to see legislation where a government is going to say, "You've got to do this."

I notice that this is going to be reviewed in five years. I'd hate to see what impact that's going to have on our whole segment of society, because I have a feeling there are going to be people this legislation is supposed to help whom it's not going to help at all. I just mentioned that some of the disabled will not get the benefits of this legislation because they're not going to tell people that this is their problem.

I can see people as well—I come from a glorious, multicultural community in my riding where we hold things like Carabram to have people get to know one another and understand one another.

**Mr Mills:** This is a speech.

**Mr Callahan:** Sure, it's a speech; it's my views. But I find it passing strange that these people, who perhaps are quite capable people and would love to get the jobs on their own hook, are going to find that the rest of the community is going to be pointing their finger at them and saying, "Well, you got the job because you belong to this particular group."

I've had people come up to me from the multicultural community, I've had women come up to me, I've had disabled people come up to me and say, "I don't want the job because I'm disabled, I don't want the job because I'm a woman, I don't want the job because I'm a member of a visible minority; I want to get the job on my own skill and ability."

You've obviously looked at this legislation and you've determined, contrary to what the government

says—the government says it's not a quota system. If that's the case, I would like to see them put their money where their mouth is and write that into the bill, because that will certainly go a long way towards the eventual—maybe the group before will accuse me of being a fear-monger, but it will eventually prevent the backlash that will in fact ensue from young white males out there who are struggling, are on welfare, perhaps collecting unemployment insurance, can't get jobs and see this as a significant—

**The Chair:** Allow me to take a point of order.

1440

**Mr Mills:** On a point of order: Isn't the whole intent of these hearings to listen to the presentations and to ask questions relevant to that? I don't really buy into this speech. I think it's embarrassing to the presenter. He doesn't want to hear that.

**The Chair:** I understand what you're saying. The member has that kind of flexibility, as indeed all members do. We encourage members, obviously, to direct their questions to the deputant and be as focused as they can, but beyond that, it's hard to restrain them.

**Mr Callahan:** As the member for Durham East well knows, that's not a point of order and he knows I have that right, so he should perhaps refrain from the speeches.

**Mr Mills:** I heard you last week in Windsor.

**Mr Callahan:** You've already told us you don't like it in regulation. I can understand that because it's done in the cabinet as opposed to coming through the House. Would you like to see the legislation clearly define that the opportunities this bill is going to bring forward for those people in the designated groups will be based on merit, not on it being some sort of a special deal for these people?

**Mr Rapson:** That's actually what this legislation is going to do. As I mentioned, the area of moderate to severe disabilities is where you're going to run into wanting to get those people employed and having to use some extra measures, possibly some subsidies and so on. The employment equity bill we're talking about right now, Bill 79, is going to address more exactly that issue you're talking about, and that is allowing people to compete on an even footing to get jobs and to get promotions.

By having the bill in there, by getting people hired, we're going to have more people in the workforce who are disabled, who are black, who are women, who are aboriginal, and those very young white males you're talking about whom you're fearing the backlash from are going to see that these are people who can do a job just like anyone can, and it's going to become accepted. Then this whole piece of legislation hopefully is just going to be history and it will run by itself.

**The Chair:** We've run out of time, Mr Callahan.

**Mr Tilson:** I am interested in definitions because that's how the acts work, and I am interested in your comments about moderate to severe disabilities. There are different ranges of disabilities, and some people may be disabled and they may not think they are and vice versa. The same goes with racial minorities. There are all kinds of shades under the sun. It's a really difficult problem, and these definitions, I would submit, simply make it almost impossible to deal with those things. How much native blood should one have to be an aboriginal? Who's a racial minority? Who's ethnic?

**Mr Rapson:** Excuse me, Mr Tilson, since we're dealing with disabilities, I'd like to deal strictly with disabilities. I don't have it in front of me. Would anyone have the regulations that has the definition?

**Mr Tilson:** Yes. It says, "Person with a disability" means a person who has a persistent physical, mental, psychiatric, sensory or learning impairment and"—this is the part that I have problems with—" (a) who considers himself or herself"—in other words, it's in the self-identification issue—"to be disadvantaged in employment by reason of that impairment, or (b) who believes that an employer or potential employer is likely to consider him or her to be disadvantaged in employment by reason of that impairment."

In other words, it's at the sole discretion of the employee who may say things; again, I will look at the disabled, and I'll admit it's a frivolous example and I do it for that very reason, the individual wearing glasses. You're about the third or fourth person I've made that comment to, but there could be others I that can't think of. My point in making it is that it is a frivolous comment simply to get a job. People say, "We're insulted that this is being done," but I say we're in tough times and people will do anything to get a job.

**Mr Rapson:** I understand your feelings. It's simply because of those types of feelings that those in the disability community have regarding classifying people with glasses, say, as has been done in a lot of cases, as being disabled. But look at section (b) in that definition: someone who believes an employer or potential employer is likely to consider him or her to be disadvantaged in employment by reason of that impairment.

**Mr Tilson:** But it's the employee who believes.

**Mr Rapson:** That's right.

**Mr Tilson:** That's my point. Someone may think they're disabled but they're not.

**Mr Rapson:** I really have to agree with the previous person who was presenting. I don't think people—

**Mr Tilson:** You think people would be scoundrels to do that and there are very few scoundrels out there?

**Mr Rapson:** There are a lot of scoundrels out there, but I don't think people are going to take advantage of it that way, not the way it has been taken advantage of.

**Mr Tilson:** I hope you're right. I quite frankly think the visible minority section—sorry, a member of a racial minority. I think the definitions are so vague that people are going to abuse the system.

**Mr Rapson:** To be honest with you, Mr Tilson, the problem that we have more, which is why I was talking about the area of definition, education of persons with disabilities, is because you're more likely to have people who actually have disabilities who consider themselves not to have a disability. It's those people who need to be educated that yes, they do have a disability so that we get them into the workforce on this one.

**Mrs Witmer:** Thank you for your presentation, Mr Rapson. We did hear from one employer—I think it was IBM—who indicated that when they first did a survey of their workplace, there was a reluctance of individuals to self-identify and, obviously, it's going to take a lot of education on the part of the employer community and hopefully the government as well, and it will be an issue which needs to be addressed.

You've indicated here that individuals need accommodation. I guess my question to you is, what type of accommodation, what barriers are there presently to individuals such as the members of the Epilepsy Association that need to be dealt with?

**Mr Rapson:** Some of the barriers that one might face as a person with a seizure disorder—just to give you an example, some people have seizures first thing in the morning. They might get up and they wouldn't be able to get to work for 8 or 8:30—so simply the employer making the accommodation that the person starts at 10 o'clock. Others are geographic circumstances, allowing a person maybe to work from home, that sort of thing, because they can't drive and would need to drive to get to the office. Those are a couple.

**Mrs Witmer:** They shouldn't be too difficult to overcome if people work together to ensure that happens.

**Mr Rapson:** The thing is that most of these accommodations, as I'm sure you've heard so far in this last week, take very little effort and also take very little capital for an employer to achieve. In fact, for most of them, I believe it's under \$500.

**Mrs Witmer:** It's just a better understanding of one another and what our needs are.

**Mr Rapson:** Exactly, and a level of acceptance.

**Mrs Witmer:** Thank you very much. I appreciated your presentation.

**Mr Fletcher:** Thank you for your presentation. My sister suffers with epilepsy, petit mal, and she's lied all her life on job applications because when it came to an application and the medical part, she put down no. She's never had a driver's licence—a lot of jobs that she could have done. Medication was fine. Her seizures



are controlled, yet she never did consider herself as a disabled person, a person with a disability; she considered herself as someone who could do any job at any time, given the chance, and she was never given the chance because she couldn't get past that barrier. She stopped identifying.

I'm just wondering, with epileptics, whether the self-identification is going to be a problem. Is this legislation going to remove that barrier, where you can finally identify as someone with a disability and still get in the door?

**Mr Rapson:** It is going to help and it's very important. I know a lot of people who won't disclose until after, say, a probationary period for all those same reasons that you're talking about with this acquaintance of yours. By making this law, especially if there are quotas, people know that they have the protection. They have the protection to say, "Yes, I have a disability."

1450

**Mr Fletcher:** People in your organization who are young white males, was the barrier to them the disability or the fact that they're young white males?

**Mr Rapson:** I'm sorry. I'm not sure I understand your question.

**Mr Fletcher:** Okay. Every organization—a lot of organizations have young white males. We hear a lot about young white males not being considered for job opportunities. But you take a young white male who has epilepsy, what is the overriding factor for not getting in the door for a job? Is it the epilepsy or is it being a young white male? With this legislation, what do you see as the turnaround?

**Mr Rapson:** You're asking me, is this reverse discrimination? Is that what you're saying?

**Mr Fletcher:** Yes.

**Mr Rapson:** Okay. You might have had this quoted to you over the last few days, or you might not have or you might be familiar with it, but I'm sure you are familiar with Judge Rosalie Abella.

**Mr Fletcher:** Yes.

**Mr Rapson:** She said: "The end of exclusivity is not reverse discrimination. It is the beginning of equality." That's exactly the way I feel.

**Ms Carter:** I just want to make a couple of comments before I ask my question. I'd like to ask Mr Beer opposite whether it occurs to him that for centuries people have been getting jobs because they were white males. I wonder if they felt ashamed, as you're saying that people should now feel ashamed because they get a job because they're black or whatever. Also, white males have been getting the special deals. Just think about that.

Also, as regards what Mr Tilson was saying, nobody gets a job because they're designated disabled; they get

a job because they're qualified. So you're not going to get a job just because you say you're wearing spectacles or whatever else it might happen to be.

Okay. Now I'd like to ask you—there seems to be a problem with words. The bill refers in different places, I believe, to "persons" and "people" with disabilities. Do you have any feelings as to which is the better word to use, "persons" or "people"?

**Mr Rapson:** To be honest with you, no.

**Ms Carter:** No, because there has been some suggestion that the word "people" somehow lumps people together, rather than seeing them all as separate individuals. But that hasn't been an issue.

**Mr Rapson:** That hasn't been an issue with us.

**Ms Carter:** Okay, another question: Bargaining agents presumably will have to have access to workforce information, since they have responsibilities for the development of employment equity and unionized work forces. Do you see any problems with that?

**Mr Rapson:** I don't see any problems with that because the way this should happen is that people are not going to disclose on a job application form that is available to whatever manager wants it. They're going to disclose on an employment equity form, which is going to go to the employment equity officer or whoever the people are, and that's going to address that problem and keep it to a small group.

**Ms Carter:** Just one final comment. You talked about educating people as to how they stood in regard to this legislation before they fill in forms and so on. It is my understanding that the bill provides for the Employment Equity Commission to have that function.

**Mr Rapson:** Yes.

**Ms Carter:** So I think that is taken care of.

**Mr Rapson:** Yes, it is. What we wanted to do is reinforce that and also to have the Employment Equity Commission give community groups like ourselves, for example, a larger part in that education.

**Ms Carter:** Okay, thanks.

**The Chair:** Ms Harrington, one last question.

**Ms Margaret H. Harrington (Niagara Falls):** Thank you, Mr Rapson, for coming. I too am quite concerned about the self-identification. I have a friend from many years who has had lupus and has applied for various jobs. I know what she has gone through, agonizing on whether or not to identify. Hopefully, these changes are not going—we realize these are not going to be immediate or quick, but we're talking about changing attitudes towards people and between people and this is going to take some time and education and part of this process. But, as you say, I hope it will be a significant step forward for people.

My question is with regard to small employers. You talked about strengthening the bill and one way of doing

that is looking at the question of small employers, those with less than 100; there are modified requirements. Then we're talking about a concern about employers who have less than 50 people. We realize in future more businesses are going to be smaller; that's the way our economy seems to be going, so it is going to be a concern. Would you feel it would be a hardship to extend some of the requirements of the bill to those with less than 50 employees?

**Mr Rapson:** No, I don't feel it would be a hardship at all. As a matter of fact, in the paper written by our association when the commission was first put together we had talked about that and had talked about a limit of 20 instead of 50 or 100. As a matter of fact, I know in my own company, which is a very small one, there is a representation that would fit the way the bill is right now. It was a conscious decision and it was done within the last 18 months. Obviously, I've seen it work in a very small company and I know it can work.

I probably read the same article you did in the business section today about small businesses and the percentage of small businesses as opposed to large businesses going up so rapidly that it is going to be an overwhelming part of the market.

**Ms Harrington:** So you would direct the government to look in that direction?

**Mr Rapson:** Yes, certainly.

**The Chair:** We've run out of time. Mr Rapson, thanks for coming and participating in these committee hearings.

**Mr Rapson:** Thank you all very much.

**The Chair:** Peterborough Psychiatric Survivors is the next group; they have cancelled. I want to explain briefly that as cancellations happen, we try to go through the list of the people who are on a waiting list who want to appear before us. More often than not, some of them have a very short period in which to prepare themselves. So we apologize, but we're doing our best to have as many people as possible present their cases to us.

#### COUNCIL ON HUMAN RIGHTS AND RACE RELATIONS

**The Chair:** We have today in their place the Council on Human Rights and Race Relations, Mr Syed. Welcome, Mr Syed. You've seen the previous speaker in terms of process. You have half an hour and hopefully you'll leave time for questions and answers.

**Mr Hasanat Ahmad Syed:** Yes, I have a little bit of understanding of what is happening here. As I indicated in my written presentation, it was phoned in at about 1 o'clock that I may make the presentation. I was working on it, but I could have brought a number of facts and figures which I couldn't bring at this juncture, so I'll just read this brief written presentation.

I appear on behalf of the Council on Human Rights and Race Relations. First of all, I would like to compliment the government of Ontario for bringing the employment equity bill and the standing committee for giving me an opportunity to appear before the committee. The bill does make a beginning, even though small, in the areas of making provisions for Ontarians of visible minorities to look for opportunities in employment.

I can recall my own example: When I moved in 1979 to Ontario, I must have applied for at least a hundred vacancies, and the response was invariably that I was either overqualified or had a lot of qualifications but did not meet the specific needs of the specific job, or they informed me that they were keeping my application in their files for the next three months.

**Mr Callahan:** It sounds like you applied to the government. That's their stock letter.

**The Chair:** Continue, please.

**Mr Syed:** The point that I wish to make is that the employers have a host of stock responses which it is difficult to challenge, and they are so legally worded that it is very difficult to maintain that the rejection has been made on the basis of the fact that the colour of the skin of the candidates is different from the colour of the employer. There are excellent provisions in the bill, which the council hopes would forestall all such attempts by the employers.

1500

What, however, the council is now concerned about is another type of discrimination. While it was Bob Rae who, while he was in opposition, drafted an excellent private bill on the issue, unfortunately it is also Bob Rae, for whom we have a great deal of respect and recognition of the fact that he had done some wonderful things, who, when his government took over, a certain group of people from visible minorities flooded the corridors of Queen's Park.

This is not fair and proper. The term "visible minority" does not apply to one group of people, and the recruitment of one group of people at the expense of the other visible minorities, especially those Ontarians who are from India, Pakistan and Bangladesh—as a matter of fact, this group of visible minorities, according to Statscan, outnumbers the group of the minorities which the NDP government is very fond of.

The government of Ontario, as one of the biggest employers in Ontario, should set models, should be a role model for other employers. The continuous recruitment of one group of visible minorities in the government sector would indicate to the employers in the private sector that by visible minorities only one group of Canadians is meant.

The standing committee should set the record straight that the term "visible minority" means not one group of



people but all sections of the visible minorities. If it is necessary, a rough percentage should be set up among the major groups of visible minorities: Chinese, the black and Canadians of India, Pakistan and Bangladesh origin.

The standing committee should also direct the Management Board of Cabinet to develop initiatives to remove the imbalance in the government of Ontario by appointing Ontarians from other sections. The government should not send the message that a minority can attract attention by breaking windows and vandalism in downtown. The council does not begrudge the recruitment of one group of people, but it would wage a war if necessary if proper balance is not maintained.

That's the small presentation, and if there is any question, I am open.

**The Chair:** Thank you, Mr Syed. Seven minutes per caucus. Mr Tilson, to begin questions.

**Mr Tilson:** I don't know how much experience you've had with the Human Rights Commission. Have you had any?

**Mr Syed:** Yes, actually I met the previous one.

**Mr Tilson:** Well, you've had a lot more than I have.

**Mr Syed:** Well, I'm not telling you—

**Mr Tilson:** My point is that we've had people come to this committee, and it's been in the media, people complaining about the operation of the Human Rights Commission. It's taking too long, it's bogged down, they're going nowhere etc. I must confess that does trouble me as to the whole subject of discrimination.

I've raised this question in the past, that now we're going to have another commission. In the 1993-94 estimates, the budget for the Employment Equity Commission is going to be \$6 million, and beyond that commission I don't know what other costs there are going to be in this whole operation of employment equity.

My question has been, and I give it to you, whether there's a certain amount of duplication. Both pieces of legislation are dealing with discrimination, whether you're one of the four groups or whether you're any other type of group, and we've had other groups come here. My concern is that we're setting up another bureaucracy, and the track record of the first commission isn't very good. I hope that if this comes to fruition, this second commission will be a little better or we're going to be in a real mess; it's going to be a complete sham.

**Mr Syed:** There's no question I'm in the picture. I didn't appoint the commissioner, either of them.

**Mr Tilson:** Sir, I don't know that. All I'm saying is, if the Human Rights Commission was tightened up, if the laws with respect to the Human Rights Commission or the requirements of the Human Rights Commission

were made a little tighter and perhaps expanded into other areas, could the work of the Human Rights Commission do the work of the Employment Equity Commission?

**Mr Syed:** We are at the moment discussing the employment equity bill and I'm prepared to respond to those questions. Now you're raising another entirely different thing of the Human Rights Commission and this work and all this load, but I'm not going to answer the question because I'm prepared to discuss the employment equity bill.

**Mr Tilson:** Well, sir, I guess I'm asking you the question as to whether or not you feel—

**Mr Syed:** I believe it is irrelevant.

**Mr Tilson:** Okay, that's fine. I have a fear that that's what this government thinks too, that it's adding just another bureaucracy and the cost is going to be astronomical. There's no question there's discrimination in this province of all kinds, of not just the groups that are in this bill but aged, youth. I mean, there are suggestions of discrimination against young women in different hiring practices. They're not being referred to. There are all kinds of discrimination that aren't referred to, and yet it may be the subject of the Human Rights Commission.

So my question—and again, if you're not prepared to or don't wish to answer the question, that's fine, but it's a concern that I have—is that we're setting up another level of bureaucracy that's going to cost at least \$6 million and may in fact not perform the job that this group hopes it will. So, thank you, sir.

**Mr Syed:** There is no need for setting up another commission at all.

**Mr Tilson:** I don't think so either. I agree with you.

**Mr Syed:** It would probably be the safest way to amend the bill or shape the bill in a way that can envisage these safeguards in the bill. As a representative from the visible minority, I'm very much satisfied with various provisions of the bill. They are a good beginning. The only thing is that at the time of political appointments or things like that, there has been a certain weight given to a particular group. Now, I believe, and Statscan says, that the group to which India, Pakistan and Bangladesh people belong outnumbers the other group, the group that is probably at the moment very much flooding the government of Ontario.

**Mr Tilson:** The Human Rights Commission of course does deal with those matters.

**Mr Syed:** Well, you have to go to the Human Rights Commission on an individual basis.

**Mr Tilson:** On an individual basis?

**Mr Syed:** Yes. But here I'm talking about a particular group. So either the whole group goes before the commission and says this has been done—and I believe

this is the appropriate forum where you can raise this question and where the things can be spelled out that this is not the way to tackle the thing.

**Mr Tilson:** You don't think a particular group could go to the Human Rights Commission?

**Mr Syed:** No. That is again a very laborious process.

**Mr Tilson:** Oh, I'll say it is.

**Mr Syed:** It's a very laborious process, and again, as you indicated, it is weighed down with bureaucracy.

**Mr Tilson:** Sir, I quite concur. People have said over and over the system that's in existence isn't working, and yet we're going to create another system, knowing full well the first system doesn't work.

**Mr Syed:** I'm not in favour of creating any other system. I believe the system that has been envisaged in the bill is good enough. The only thing is that it should be provided more teeth. That's it. I mean, there is no need for creating another bureaucracy at all.

**Mr Tilson:** Thank you, sir.

**Mr Mills:** Thank you, sir, for coming this afternoon. I read your brief here in the beginning where you said that you came here in 1957 and you applied for at least 100 jobs.

**Mr Syed:** More than that.

**Mr Mills:** I can tell you that I came to Canada almost 40 years ago, and I thought the biggest hindrance to me getting employment was I wish I could have got rid of my accent but I couldn't. I've still got it now, you see. It just won't go away.

**Mr Syed:** So you endorse what I said.

**Mr Mills:** Now I'm an old white male, you see. Anyway, enough of that humour.

**Interjection:** That's presuming an awful lot.

**The Chair:** Continue, Mr Mills; you're doing fine.

**Interjection:** We didn't find it very funny, Gordon.

**Mr Mills:** I listened to the exchange that you had with my colleague Mr Tilson, and what I'm worried about is that you say on page 2 the council is now concerned about another type of discrimination.

**Mr Syed:** Yes.

**Mr Mills:** Tell me why you think that. Why is this?

**Mr Syed:** Because I find the people, the Ontarians, from the origin of India, Pakistan and Bangladesh have been ignored, actually, have been ignored repeatedly. For instance, recently the NDP government appointed three or four people, senior people: the Employment Equity Commissioner, then the chairman of the Ontario Human Rights Commission. They belong to one group. I can name a number of people.

See, what I'm saying is, I'm not blaming the government. I don't know what fascination they have that they are staying away from the people who belong to this

particular region. This has been made clear to the Premier a number of times and he acknowledges that in that there has been some partiality, but the thing's being done. I need some safeguards in this bill since the government of Ontario is the biggest employer and the other employers in the private sector say: "Look at it. This is being done by the government of Ontario, and they are the role model for us."

1510

**Mr Mills:** So you're not satisfied with—at all.

**Mr Syed:** No, I'm not satisfied with any percentage of the thing. Of course there has been a recruitment of the visible minorities. "Visible minority" doesn't apply to one group of people.

**Mr Mills:** But I know there are some who are employed by the government of Ontario. But you say that that's not enough.

**Mr Syed:** No, I'm not saying that. What I'm saying is that they are appointing; all appointments have gone to one group of visible minorities.

**Mr Mills:** I see.

**Mr Syed:** There are three distinct major groups: one is black, the other is Chinese, the other is from India, Pakistan and Bangladesh. The people from the origin of India, Pakistan and Bangladesh are totally ignored. Either we should go and break the windows downtown in order to attract the attention—that's the only way.

**Mr Mills:** I have a colleague who needs to ask a question, so I'll defer that.

**Ms Akande:** Thank you, Mr Syed, for coming and for your presentation. It's nice to meet you.

First of all, though I do take exception with the premise upon which your presentation is based in terms of the breaking of windows, vandalism downtown, you know that there's considerable discussion even at this point about the fact that those things in fact were not the purview of one particular group.

However, am I to understand from your presentation that what you would prefer to see is some collection of information or data by subgroups of visible minorities, in other words, not just one particular category but you would have visible minority information broken down into the various groups within that group so that you would have information?

**Mr Syed:** That would greatly help. You're right. I think that's the best way.

**Ms Akande:** Is that what you would want?

**Mr Syed:** Because then there is no feeling of any grudge or any complaint because they say you are only this much and they are this much so they are getting that much. That's fair enough. That's what I'm saying, that you have to rely on Statistics Canada. Statistics Canada has released the figures. I believe, and according to the figures, the Canadians from the group of



India, Pakistan and Bangladesh far outnumber the other groups, excepting Chinese. Chinese of course are very much larger in number. So in order to give a sense of participation to everyone, all the sections of the people should participate in the government. It is not left to one group that should go and participate in the government.

**Ms Akande:** I understand. All right, then. There are a couple of things. It hurts me to see us argue over the crumbs while the real meal is being eaten by the majority. However, there are employers who in fact respond rather negatively to the collection of information as the bill now stands. What would be your response to them if in fact we are requiring them to collect even more information on the basis of the subgroups which exist below or within each of the main designated groups of which we speak?

**Mr Syed:** I think you have to add some more teeth to the bill, because this is not really a confidential thing. You simply are asking for a fair representation of the people living in Ontario.

**Ms Akande:** So you would ask the employers to continue to collect that information, even in spite of their complaint? Is that what you're telling me?

**Mr Syed:** I couldn't understand the question.

**Ms Akande:** They're saying that you're asking them to collect even too much information now in terms of their time and the cost etc. Given that you want the information about each subgroup recorded under the designated groups, your feeling is that it is valuable enough to insist that employers collect that also?

**Mr Syed:** Well, if it serves the purposes of justice, there is no harm in it. You see, it is a question, basically, of ensuring proper and fair representation to do justice to all groups, and in that process, if the employers collect more information, so be it.

**Mr Callahan:** Mr Syed, your letter is very interesting but it also causes me anguish. Here we are sitting in a committee, on television, sort of talking about the citizens of Ontario, be they of whatever race, religion, creed or whatever, and I find that very difficult to do.

In any event, you've said in your letter that you were told you're overqualified. I can tell you there are a lot of people out there 40, 45 years of age who have lost their jobs due to the downturn in the economy who have major qualifications, and they go out to the employer and the employer says, "You're overqualified." They're applying for a job. They just want any job. They don't care what it is. They've got to feed their families so they're prepared to take anything and the employer says, "You're overqualified." Really, what he's telling the person probably is, "You know, you're getting on to the stage where we can't put you on the company pension, or we haven't got a place for you." Those are the people who are struggling for jobs and they're getting

the same kind of response. I don't see anything in here in this bill to deal with them.

I also find the subgroups, with all due respect, that you've suggested, and if you're going to make it a subgroup, then please put on there "Irish, Italian"—we are all Ontarians and if what you're suggesting is a quota, which is what I think the government is suggesting—it's not based on the ability of the people but a quota—then I want to get on the list—

**Ms Akande:** Those with disabilities or those on the quota?

**Mr Callahan:** Well, without being on that list, I'm not going to be able to have a job. Maybe some people will say we probably would like to get you out of that job, I don't know, but I really find it difficult to sort of hear this crap. You're upset because, from what I gather from what you're saying, the Rae government and its Lieutenant Governor appointments have been people from a certain visible minority as opposed to the ones you've just discussed. That's your argument, isn't it?

**Mr Syed:** Should I respond to your thing? Number one, you made a particular reference to my era, the era relating to me. You missed the year, 1979, and you are talking about things which are currently taking place. In 1979, the situation was entirely different. I mention that in order to indicate the reasoning or mentality that was existing at that point in time.

Since you have mentioned this thing, I'll probably have to relate an incident. The time that I'm talking about was the day of the Bill Davis government. The Liberals were in opposition. I went to my member—Margaret was her name.

**Mr Curling:** Margaret Scrivener?

**Mr Syed:** No, Margaret—

**Ms Akande:** Margaret Marland?

**Mr Syed:** The point I am making is that I went to her and I indicated to her that the amount of applications that I'm making, I'm not even getting calls for interviews, and she wrote letters to four or five ministers personally to at least give a man a chance to appear, and I was able to get hold of one deputy minister who said: "Look here, Mr Syed, I know you are qualified. I have only the recommendations from five other MPs and people. Now, what should I do? Should I ignore them?"

Then I understood that the conditions over here were similar to what used to happen in my country, so I stopped bothering about that. I never applied after 1979 because I knew the game was the same. You must have one or two MPs in your pocket so that you get a job.

1520

**Mr Callahan:** A lot of people watching this could be disappointed. I've never been able to get anybody a job.

**Mr Curling:** Mr Syed, I just wanted, before the time runs out, to get a little question in here. What I'm hearing you saying is that there are qualified visible minorities like yourself who just don't get the opportunity to get a job. There was a report. A task force was set up and a report was done called Access to Trades and Professions in Ontario—

**Mr Syed:** I did appear before that—

**Mr Curling:** Yes. Do you feel that, if the government of the day would act on those recommendations and release up most of those people who are qualified, like yourself, you said, there would not be any resistance? These are barriers in itself to access.

**Mr Syed:** There are barriers.

**Mr Curling:** I won't be long. You've been very generous with me to give me a question in. But the fact is that the minister stated that she will have a pilot project. Don't you feel it's time that the recommendations go full blast and implement those recommendations so we can have qualified people like yourself—

**Mr Syed:** This is all politics. I don't want to get involved in the political thing here.

**Mr Curling:** I'm asking about the task force.

**Mr Syed:** The thing is that the report has made recommendations, and I met the minister, Elaine Ziemba, put the same question and she said, "I'm going to bring some legislation in the assembly." That's the assurance she gave to me. I am very much concerned about the outcome of that report also, because there are barriers put up by so many different things.

**The Chair:** Questions have ended and our time is over. Mr Syed, thank you very much for coming today.

KARANJA M. NJOROGÉ

**The Chair:** Trent University, international programs. Welcome, Mr Njoroge. We have half an hour for the presentation. You've seen the time element in terms of questions and answers at the end. Begin any time.

**Mr Karanja Njoroge:** Thank you very much. My name is Karanja Njoroge. I work for Trent University as an administrator and I've also been involved in various other community organizations, both in Peterborough, where Trent is situated, but also across this province. Recently I have been a member of the Ontario Racial Minorities' Organizing Committee for Training and recently also have been nominated to the proposed new Ontario Training and Adjustment Board as one of the members of the board of directors.

I come to you this afternoon in my own personal capacity, although I've had extensive consultations with my colleagues in the university system and also those concerned especially about the involvement of racial minorities in training and education programs in this province.

I am also happy to note that I am accompanied today by two students from South Africa, Zenzele and Selloane, who are here to witness some of the profound changes that are continuing to happen in our so-called First World, while they are struggling with initial problems of eliminating racism from the overt positions of apartheid, and in the future, of eliminating racism, for the provision of the kinds of opportunities that each and every citizen requires to earn a living. I'm very fortunate to have them with me just to witness the proceedings, if you will.

Let me first express my appreciation that you've allowed me to speak. I know there are many who would have loved to be here and to be heard, and for this reason I'm very appreciative of the time given to me.

From the beginning, I want to declare my profound admiration for the government of the day in bringing forth an historic bill which I believe will be the proud legacy of the NDP government in the years to come, even long after maybe you're gone.

Two hundred years ago, Lord Simcoe, the governor of Upper Canada, proclaimed a piece of legislation that I believe was as significant as Bill 79 will be for the Ontario people these coming decades. He signed an act outlawing the trading and possession of slaves. At that time, many were sceptical about the usefulness of such legislation and, regrettably, there were even many who were opposed outright to the legislation, arguing that it was bad for business. Have you had that comment?

**Interjection:** Yes.

**Mr Njoroge:** You have? Lord Simcoe was also told that this is a do-gooder act. "You're trying to be good for everyone and it's not good for the community." Even, I dare say, there were people who were worried about the costs of administering such an act back in the days of Lord Simcoe.

Today, you will hear similar arguments by those who would prefer to have the status quo, by those who will not tell you that they prefer to see women and minorities ghettoized in low-paying, deadend jobs in our economy. They will not tell you they would rather have persons with disabilities continue to be wards of the state for their survival, unable to fend for themselves, not because of their inability to do so but because of our own bigoted ways with which we look at persons. You will continue to hear from these people that they would rather have their status quo.

None of these critics of this bill will come to you with an alternative vision or a suggestion of how to get out of our current quagmire, both socially and economically. They will talk to you about reverse discrimination, they will talk to you about lowering standards, they will talk to you about the cost of establishing this Employment Equity Commission, but none of them will



tell you how we get out of the current quagmire of our society, and that is what the bill speaks about.

In this century, the cost of systemic discrimination and racism, especially—and I want to repeat that for my friend here—anti-African racism in Ontario, cannot be quantified by a presentation like this one. It is as pernicious and as punitive as slavery was in the time of the 19th century.

I want to tell you that the people I have talked to would like me to say categorically that they register their support for this legislation for two reasons: One, we believe in the importance of equity, justice and fairness in the development of our communities. The second thing is that it's vital for Ontario and for all of us in this province to enter an era of major economic changes around the world with an understanding that we must utilize all the assets and resources available to us in order to be more productive and more competitive in a very competitive global economy.

Some of those resources, or in fact a significant part of our assets, is the human resources that Ontario has. If we are underutilizing them, then in fact we are putting ourselves on a very steady slope down to the economic ghettos of this world.

Ontario's economic prosperity depends on how globally competitive our labour force becomes, how the skills of our people are utilized and how we adapt ourselves to the realities of the global economy. When you walk down Toronto streets, you will notice the composition of our own population. When you go to the boardrooms and the executive offices of Bay Street, you will not see that reflected in the decision-making of what makes this economy tick. That is the heart of the problem. If you really want Ontario to go into the 21st century with a people who are recognized the world over as being defenders of justice, equal pay and fairness and who can reach out to the people who can invest their dollars in our own economy, then we must begin to speak to the need of utilizing those skills that are still walking the streets of Toronto.

I am disgusted when I go to buy little things from vendors on the streets, and after talking to some of them, I then become aware that they are trained radiologists who are selling jewellery on Yonge Street, trained radiologists from Pakistan, trained nurses from Ethiopia making beds in hotels in Toronto. We must ask ourselves, why are we misusing the skills of these people?

1530

Some of you have stayed in hotels. The next time you see the maids come to make your bed, ask them who they are. Chances are, they are all people of colour. Chances are they are recent immigrants. Chances are they are very educated. Let us ask, why are we utilizing these people in this manner?

For me, the single overriding challenge faced by not just ourselves in this province, but the entire North American economy, especially our inner cities, the large metropolises, is the social policies and attitudes that marginalize groups of people. The marginalization of individuals and communities creates unsafe living conditions which, in turn, impoverish families and adversely affect the values on which a community is built and thrives on. Once that deteriorates, then I'm sorry to say, even the foreign investor and, in fact, the internal investor become very wary of investing their dollars in a community that is heightened by tension and violence and lawlessness.

When you open today's newspaper and you see that someone shot at a taxicab driver three times for \$25, you must ask yourself, what kind of an Ontario do you want to leave for the 21st century? Will you be able to identify the problems of that person, both the victim and the potential inflictor of this? I would suggest to you that the employment equity bill as proposed may in fact be part of an answer to that problem, that when our people can see the glimmer of hope in terms of developing their future, once the young people on the streets can believe that there is a chance for them to grow and to thrive in our own community, then it becomes good for us. It's good for you and it's good for me.

I have a child too. I have an eight-year-old who's going to be nine in September and I want her to grow up thinking that Ontario is a place which she must call home and where all avenues of her own ability—that the sky indeed is the limit and that she will not be judged by her skin colour but by her intellect, and therefore the dream must continue.

Finally, I want to mention some of the suggestions that I'm making to make this bill a better bill. I am suggesting, for example, that the preamble, which should be the main thrust of the ethos behind the bill, must be changed. It must speak about the benefit of this bill to the larger Ontario community. Our people, the coloured people, the visible minorities, are tired of being told, "We are doing this for you." I don't believe the employment equity bill is being done for me. That's not true. It's being done for you too; you, the white male, the so-called white male who is complaining about this. This bill is actually articulating a future for that white male. If you continue with the status quo, this place will be a battlefield worse than Sarajevo, and if we can give opportunities for everyone, I am prepared to tell you that we can then look forward to a better and equitable and fair Ontario.

Another recommendation that I will be suggesting to you is a change by way of classification. If you will, the definition of the groups clearly identified as target groups must be made much clearer. This is really an interpretation. I'm not a lawyer, but I would bet that the current definition of "designated group" is left too wide

and too open. What I would suggest be done is that we say exactly what we mean by "designated group" or "disabled persons." I think that is very, very good. If we can say that the designated group is as identified by the Ontario Human Rights Code, then we know where to refer when we want to really ask ourselves, "Who can I count as a racial minority in my community?" or when people have chosen not to self-disclose or to self-identify themselves as being one or the other.

There are a few other things that are primarily technical and I suggest you read my presentation for you to know what it is that I'm suggesting be changed.

Finally, I believe the only way that Ontario can get ahead in a world that is so full of difficulties, and difficulties not just in managing the government as it is with getting enough money to do everything that the citizens want done, but also difficulties in the sense that we are no longer operating in a world that allows us to think only about Ontario—we must begin to think about what is happening beyond the confines of our community. Ontario does require visionary leadership and that leadership, I think, may be sitting around this table—that visionary leadership of men and women who must look beyond the short-term political discomforts of talking about anti-racism, the short-term political discomfort of standing up for those on the lowest end of the ladder. If we can be able to rise above party politics in this one, I think we will see ourselves becoming visionary, becoming a leadership that speaks to us, but also becoming a leadership that calls upon our community to nurture humanity in all its diversity, and to nurture our communities with integrity and the commitment that it deserves.

I would want a leadership from you that will bestow a sense of hope to the hopeless and offer a supporting hand to the disadvantaged; a leadership that will challenge all our peoples in Ontario to celebrate and accentuate the positive in all of us; a leadership that will actively seek to empower the marginalized, to give confidence to the weak and to encourage excellence in all of us. Only then can I believe that my daughter has a future in Ontario. Only then can I keep both my feet on the ground in Ontario.

I can assure you that the majority of the people who will look at this bill, not primarily as an act by itself but as a step in the right direction; not as a finality of resolving the problems that it addresses but as a small step towards that goal eventually, I think they will all support you and support the bill.

**Ms Carter:** Welcome, Karanja and your friends, to Queen's Park. Of course, I know very well how active you are in Peterborough, both in the Trent international program and the race relations committee and I congratulate you on your appointment to OTAB.

Since you are so involved in so many different ways, I wonder if you could give us more details as to the

kind of problem you come across. We have had some presenters to this committee who've told us there isn't a problem, that things are improving, that some groups are even overrepresented in the workforce already; no legislation is needed. I remember when the minister came to Peterborough we had two meetings; one was with, I guess, a business-oriented group, all white. They said there was no problem. Then we had a meeting with the race relations committee and it was quite a different story. Could you highlight some of the particular problems that you come across?

**Mr Njoroge:** There are many problems out there. If anyone says there is no problem, they are really not serious about Ontario; they are neither leaders nor real serious about what is ailing our economy. I really refuse to see this as a social agenda. There is something wrong with the way our economy is being run.

I forgot to tell you that I am also a founding member of the Friends of Black Inmates and in that capacity have visited many provincial correctional centres as well as federal correctional centres, penitentiaries, and more often than one, when I speak to black inmates, and there are many of them inside, many of those, 16-, 17-, 18-, 20-year-old black people inside the jail system in this province—when I speak to them, the pattern that comes out is overfrustrated young persons who have actually never been given one sentence of positive feedback. They have never had an opportunity to sit across from someone, or to hear something from leaders or from teachers or from their own parents, by the way, which says: "Hey, you can do something. You can do this or the other and so on."

1540

The constant barrage of information they get is how negative they are, how awful these particular communities are and, "You are destined to sell drugs anyway," or "Why are you hanging out, listening to this loud music?" and so on. So they internalize all these things and they have absolutely no avenue to believe in themselves. Therefore, I am shocked that someone can tell you there are no problems.

In Peterborough, where I have been for five years, almost every month I'm dealing with a crisis of a young, minority person who is facing real, serious problems of finding space for themselves and believing in them. We work with their parents, we work with their teachers, we work with other government departments and counselling services and so on. The real problem is that no one believes they have a chance in Ontario from our community and the few that do, really work very hard and eventually find some way. You cannot turn that around unless you have programs and policies in place that actually assure people there is a chance. This bill is one such legislation.

It's not the only one that is needed. We need the Human Rights Code; it does not replace that. We need



other bills too, and we need active government involvement in anti-racist education. That is key to the challenges of our time. But if you prefer to bury your head in the sand, yes, there's no problem.

**Ms Carter:** Some of the people on the opposition side have told us that the problem is that there aren't enough qualified people from the designated group so the problem is education and training. But I think from what you're saying, that is a separate issue from the question of employment equity.

**Mr Njoroge:** Correct.

**Ms Carter:** You're telling us that there are people with very good qualifications who can't get access to the careers they're qualified for. I believe the government is already taking some steps to make sure that these access problems are diminished. That is separate from this act.

**Mr Njoroge:** It's separate from the employment act, the bill before us. But I think it's very crucial, I must state to you, that unless the access to professions and trades is also changed, this bill may be fruitless in the long run. So I want to underscore that this thing by itself may not be sufficient.

Anti-racist education in our schools must be in place. Our teachers must be sensitized so that kids are being given the skills for which they will be given employment. Access to professions and trades must be changed and harnessed. The way we certify our trades and professions, the way we recognize credits and accreditation from foreign countries, must also be changed. That's important.

**Mr Curling:** Thank you very much. An excellent presentation. What I've learned over time, Mr Njoroge, is that after the speeches and the emotion and the pain, there must be some legislation that can make those changes that are enforceable and not patronizing the groups or so, because I always find who gets the benefit from all this are lawyers anyhow. When we put the cases to the court, it's the lawyers who have to define these rather vague definitions and all that.

Yes, on this side, this party, especially myself—I am a strong believer in employment equity and we must have legislation, mandatory employment equity in place. But to do so, we must have good legislation, because weak legislation, I continue to say, is worse than no legislation. Simcoe made his move and we are making our move now. But we are more informed. The people in place who are making decisions should understand what this struggle is all about.

Would you agree that at this juncture we have reached in this life, making legislation, we should exempt those employers with under 50 employees? Do you feel this legislation should do that?

**Mr Njoroge:** I believe it should. I mean, I agree with the current legislation stipulating 50 employees or

more for this reason: The Employment Equity Act, as defined in the current bill, seeks to address the issue of employment from the point of view of numbers. If you go to a firm that employs only five people and say, "We want you to have a representative sample in your employ," it's going to be meaningless in most cases.

Therefore, where I come from in Peterborough there will be even larger institutions which have 50 employees for which to determine the configurations of the representativeness might be difficult. What is 1.5% of 50? Do you understand what I'm trying to get at here, that we have to have legislation that is feasible? To me, 50 is a good number to start with.

**Mr Curling:** Are you saying in the public sector it makes sense, but in the private sector it doesn't?

**Mr Njoroge:** No, no. Far from it, Alvin. I'm telling you that the very important bill that is in front of us is speaking to the question of representativeness. If you go the majority of small employers with 10 or fewer employees, it becomes difficult to apportion these configurations of percentages of the larger community.

What I'm suggesting to you is that it's easier for the commission to be able to police and enforce the act for the larger employers. After all, this act is really not the end of the road. This act, in my view, is for the community to see, to have an exposure to the need to get in the best minds irrespective of colour and sex and so on and so forth. When you have more and more people employed by the larger corporations who are primarily the people who'll be more visible, then the smaller employers will almost invariably follow suit, because they will say: "Hey, you know, it's not bad to hire a black person. They do really in fact work. They are not all hopeless people." I think that's what we want to do.

I hope that this legislation will be useless 25 years from now, that we will have such an equal situation that there will be no need for it. That's what I would hope.

**Mr Curling:** But that's Utopia.

**Mr Njoroge:** Correct.

**Mr Curling:** Do you feel that any changes—

**The Chair:** Sorry; we're out of time, Mr Curling.

**Mr Tilson:** Sir, I appreciate some of the thoughts that you've given to us today. You've obviously spent some time preparing for this and articulating on it. I thank you for that.

There has obviously been substantial criticism about this bill, particularly in the media. One of the areas of criticism has said that we have a Human Rights Code which is supposed to prevent hiring discrimination based on race, gender etc, a whole slew of things, that Canadians have traditionally supported the principle of a Human Rights Code and in fact believe that citizens are entitled to equal employment opportunities.

**Mr Njoroge:** They don't practise that, believe me.

**Mr Tilson:** Well, sir, I'm telling you that's what the Human Rights Code is supposed to do, unless you're telling me the Human Rights Code doesn't do that. These same Canadians have been and are profoundly offended by the notion that some citizens have more rights than others based on gender, race, ancestry or handicap. I guess my question—

**Mr Njoroge:** Do you want me to respond to that?

**Mr Tilson:** Yes, I would.

**Mr Njoroge:** You've read *Animal Farm*?

**Mr Tilson:** I have indeed.

1550

*Emergency alarm sounded.*

**Mr Callahan:** We've got another fire.

**Mr Tilson:** That must be a heck of a fire.

**The Chair:** We've heard it before. Continue, please.

**Mr Njoroge:** To me, it's revisiting *Animal Farm*. You have one particular species of the animal family that has everything and then, suddenly, you visit that and say, "How do we change the situation so that everyone can have some power, some ability to earn their own livelihood?" You do not have that by saying everybody can go out and fend for themselves, because a majority of the people are accustomed to paying homage to this one particular species of animal.

What we need is an equalizing of the playing field and what you do is to interest our people. That's what leadership is all about. You tell your communities that unless we can reverse this so that you have women in your leadership, women in the church, black people in the workplace, Chinese people doing different things other than the local Chinese restaurant—if you have that, then you begin to socialize the idea of equity. But you cannot have equity by declaring them equal.

The Ontario Human Rights Code is very good. It's declared everyone equal. We love that. But you and I know that the majority of your folk don't think I am equal to them. I can guarantee you that. The way to redress that is to ask my university that if I am qualified for a promotion, alongside with my compatriot, a white male, and both of us can do the job equally well, I'm no worse off than him, then it should promote me. That it allows the students, the faculty, to recognize that I can be whatever, and you then begin to improve the level at which our people are involved, women are involved and so on. I am hoping that we do not have to do this. Nobody wants to be given things. I hope I was never given this job because I was black, but I had to work very hard and even now I have to act doubly hard to maintain the job, because the majority of the people will always want to see—and that's the difficulty.

**Mr Tilson:** I'm finished.

**The Chair:** Mr Njoroge, thank you for your presentation and coming from Trent to participate in these

hearings. I want to welcome the visitors who have come here and wish them well, both in their stay here in Ontario and back home.

**Mr Njoroge:** Thank you very much.

JANAKI BALAKRISHNAN

**The Chair:** Sri Lankan Graduates Association, Janaki Balakrishnan. We have half an hour.

*Emergency alarm sounded.*

**The Chair:** I think it's the same message as before. We'll disregard it if that's the case. Please begin.

**Ms Janaki Balakrishnan:** First of all, I'd like to make a change in the presentation. This is not made by the Sri Lankan Graduates Association. Unfortunately, they couldn't make it, but I am making this presentation as an individual from the Sri Lankan community.

Good evening, ladies and gentlemen, honourable members of the standing committee on administration of justice. My name is Janaki Balakrishnan, I belong to the Sri Lankan community and I am a professional engineer. My personal past experience as a minority female member in a non-traditional profession prompted me to make this presentation. Further, I feel strongly that I have a civic obligation to inform the standing committee on administration of justice of my experience and my recommendations so that other members of the designated groups can benefit in the future.

I arrived in Canada 11 years ago, possessing an electrical engineering degree and more than seven years of experience in the same field. During my nine years' stay in Ontario, I spent two years at the University of Toronto in a full-time graduate program to obtain an MSc degree in electrical engineering. The rest of the seven years were spent engaged in sessional jobs—unrelated, underemployed, underutilized, underpaid positions—and tirelessly seeking a related position. Self-learning and update and training with the growing technology have been continual during this period. I have been employed by Toronto Hydro for the last two and a half months.

In the midst of all of this, I attended seminars and workshops conducted by the former Liberal government on access to trades and professions, equity etc. I believe the Honourable MPP Mr Alvin Curling was responsible for the equity program then. Recently, I had an opportunity to express to the honourable Premier on behalf of Sri Lankans my views on employment equity policy in practice with no positive effect on Sri Lankans. Lastly, I attended the public press conference on Bill 79 to hear the address by the honourable Minister of Citizenship.

I am in a position to make this presentation because I am with Toronto Hydro today, where employment equity is practised in an appreciable manner when compared to many other workplaces. Previous employments would have neither permitted time nor provided exposure and confidence to participate in this process.



My submission is primarily based on my personal experience and the experiences that I heard from other Sri Lankans and some other minority members. My sincere thanks to the members of the standing committee and the honourable Minister of Citizenship for this opportunity to express my views on the Employment Equity Act of Ontario.

My conclusions toward this legislation are:

(1) I welcome this legislation as a positive, constructive approach to achieving employment equity in the province of Ontario, whereas voluntary methods have not proved successful in the past.

(2) It is a just piece of legislation which will have enormous impact on aboriginal people, people with disabilities, members of racial minorities women and other disadvantaged groups that may be recommended and included as designated groups. They are directly or indirectly taxpayers of Ontario and also participate by contributing to the wealth of this province.

(3) The legislation specifically targets employers' accountability, numerical goals, timetables and several other effective approaches that are commendable.

(4) Nevertheless, a few major modifications will assist in reaching effective results.

Before I discuss constructive recommendations on page 5, I would like to comment on opinions from others which may arise in due course. The mythical "principle of merit" argument is always followed by the phrase "employment equity." I believe if the principle of merit had been in place in the past, I wouldn't be taking this stand today.

Honestly speaking, I haven't reached the level to compete with white males. I'm still at the level of competing with other minority males. I was looking to the press to comment on the presentation made by the Committee on the Status of Women. I saw nothing, except on the front page, "Survey: Over 10% of Women Victims of Violence." What we need is media equity.

**1600**

Honourable Mr Winninger, I believe you can recall this event. I met Mr Winninger at a certificate presentation ceremony of my chapter of the Association of Professional Engineers of the Province of Ontario. I was the vice-chair of the chapter, which consists of 3,500 members, but I was unemployed then. This picture of a minority group female engineer—I think you have the last page in the package—receiving a certificate and my position are system realities, sugar-coated sour candies, but what I am relating here today is the practical reality. Honourable Mr Winninger, you are practically perfect in this scenario. If this picture is the practical reality, why is there a separate women engineers group consisting of a number of white females within PEO's structure?

The other item may be the divide-and-rule approach of destruction. Some of the minority groups may express their concerns that they were satisfied with prior employment equity policy and there is no necessity for this legislation. I wonder what motivates such groups. Some other minority groups may feel secure at present, but might be threatened by additional competition.

As I mentioned before, voluntary employment equity policy was not beneficial to many Sri Lankans. Honourable Mr Alvin Curling, I do not know whether you can recall, but I still remember your address on the topic of literacy at Seneca College five years ago. The honourable Mr Alvin Curling was on the Seneca College board. I was a sessional teacher there. In that, Mr Curling mentioned that a high literacy rate exists in Sri Lanka.

Honourable Mr Alvin Curling and other members of the standing committee, I strongly believe this legislation is the only means for minority groups like Sri Lankans to enter the workforce with a fair opportunity and contribute by their talents.

Now I would like to discuss the constructive recommendations and suggestions to the legislation.

Recommendation 1, exception of employers: Remove exception of employers. Include all employers in the regulation.

It will not be surprising if the big employers split their businesses to form smaller businesses and others downsize to 49 employees just prior to the effective date. A 49-employee workplace, do not ask equity; \$3.99 a meal, do not pay PST. Something like that.

I believe the exception of employers will be an obstruction to achieving a permanent solution through this employment equity legislation. Small workplaces are highly unregulated and these have been places of exploitation of most members of designated groups when they were refused access to other so-called regulated workplaces. Discrimination and intimidation take place very openly in these small workplaces and are not being challenged. At some workplaces, employees are expected to enter, work and leave with no employment letter and other documents.

Perhaps setting up numerical goals can be difficult for smaller employers. However, auditing and monitoring can be done with every employer to check the status of employees. Set up timetables for smaller employers for submission of present status of employees and advise them of plans and implementation to achieve employment equity to the best level.

Untrained staff should not be an excuse. Most of the workplaces have a personnel officer or a payroll clerk. Employers expect Canadian experience from foreign-qualified immigrants on day one. Why couldn't these personnel officers train themselves in employment equity matters? If not, there are employment equity

agencies that are very willing to train and provide sufficient information to the employers and the related personnel.

The solution to this is to redefine "employer" to include "related employer" as determined under the Labour Relations Act. Delete employer exceptions with fewer than 10 employees in the public sector and with fewer than 50 employees in the private sector.

Recommendation 2 on the implementation period: Reduce the implementation period for smaller workplaces.

According to previous discussion, in highly unregulated small workplaces, especially in the private sector, members of the designated groups are exploited very badly. Providing a long implementation period to these employers will not improve the situation.

Workplace survey and collection of information will not require much time, which is a one-time activity, immaterial of the size. The Employment Equity Commission should assist in preparing a consistent employee survey questionnaire for employers based on the size, organizational structure, nature of business etc. I believe an 18-month period is sufficient for education and training of staff to prepare the plan with the assistance of the Employment Equity Commission and other employment equity agencies.

Solution: Reduce the implementation period of private sector employers of fewer than 100 employees to 18 months, and thereby reduce the implementation period from a maximum of 36 months to 24 months.

Recommendation 3 on employment policies and practices: Specify items to be reviewed of employment policies. Obtain reports from the employers of their practices in relation to the specified policies.

Setting up guidelines to review employers' employment policies and practices will be a consistent and a faster approach. Further, obtaining information on the practices in the past, along with the plan, will assist the Employment Equity Commission for any feedback in advance.

Solution: Include employment policies to be reviewed in section 10. Policies shall include hiring and recruitment, development of job description, duties and responsibilities etc. I'm not going to read all those now. You can have a look at that one.

Recommendation 4, employment equity plan: Amend section 11.1, clauses (b) and (c), to identify members of the designated groups appropriately, and item (e) to describe in detail—to basically clarify the scope of the legislation.

Recommendation 5: Employer to submit a progress report every year since the plan is filed. Specify the format of the report with specific facts and figures.

Monitoring is essential in achieving employment equity effectively. It may be a burden to the employers

at the beginning of the process; however, it will relieve them from penalties in the long run.

The solution is that progress reports shall provide the following: composition of employees, with numbers and ratios and the composition of designated groups etc; and hiring, promotion, terminations, voluntary leaving numbers and ratios etc, as given in that list.

Recommendation 6, access and participation: Provide for access and participation to non-unionized employees and the unemployed.

Employees holding seasonal, sessional, casual, temporary and contract positions do not belong to unions. When I was a sessional teacher at college, I could not join the union. Such employees do not have any representative. Furthermore, there are members who are unemployed. They will be left in the dark, having no access. Most of these members belong to designated groups. Make provision for them to be represented by other supporting groups or as individuals.

Identify groups that should represent non-unionized employees and the unemployed. Specify the procedure, terms and conditions for individual representation or representation by the other groups.

Recommendation 7, access to information: Provide employment equity plans and reports accessible as public information. Make provision for the employees to see the plans and progress reports of employers regarding the employment equity at all stages. I believe not only the designated groups but also the public have the right to access to this information.

Solution: The employer shall post copies of the plan and progress reports at the workplace as employees' information. The Employment Equity Commission shall make provisions for the public reference of all the plans and progress reports of the employers.

Recommendation 8, Employment Equity Commission: Engage the Employment Equity Commission to deal with employment equity education, training and systemic issues.

Recommendation 9, the equity tribunal: that a single equity tribunal be established to deal with the complaints under the employment equity legislation and the Ontario Human Rights Code.

Recommendation 10 on discrimination and intimidation: Include additional cases in paragraph 29(2)2 which are refusal of employment, refusal of promotion, refusal of equitable salary, underutilized and underpaid situations, overutilized and underpaid situations.

That's all. I would like to thank again the Minister of Citizenship for the courage and initiative that she has taken to introduce this legislation. I also thank all the members of the standing committee and, finally, the honourable Premier of Ontario.

**The Chair:** Thank you very much. Five minutes per caucus, Mr Curling to begin the questions.



**Mr Curling:** Thank you very much, and also I want to thank you for your presentation. I know it takes a lot of hard work for an individual to look into this. Some of the points you've made in there are excellent.

I agree with you that Hydro has moved in the direction of employment equity, and maybe they could look at some of those things that they are doing and make some pattern to some of the progressive ways they have moved.

1610

I just want to go to your recommendation 9 in the short time. You said for an equity tribunal to be established. Would you feel that you could include the Pay Equity Commission under this equity tribunal to deal with most things of equity, all equity-related issues on that? Do you see pay equity being included in this?

**Ms Balakrishnan:** I haven't gone through pay equity in detail as such, so I don't know what the pay equity tribunal deals with, what matters, so far. But I'm not in favour of a human rights board dealing with the employment equity issues. We would like to have a separate one because human rights is already backlogged with several cases, and also this is a different situation. That's why I suggested that the Employment Equity Tribunal should concentrate on this issue alone.

**Mr Curling:** You also mentioned, and I'm sure demonstrated, that you're a victim, one of those who are qualified and yet do not fall into the category of being employed because you could be subject to Canadian experience, and most of the time when you are being employed, you're underemployed etc.

The task force that you mentioned about access to trade and professions, the recommendations are still sitting there not being implemented. As a matter of fact, I gather that the ministers and their colleagues are quite happy with it, but not happy enough to where they could implement a recommendation. They have set up a pilot project in order to put some of the recommendations in place.

As you said, employment equity on its own is not sufficient, but that task force recommendation would help. Would you feel that the government should implement that task force recommendation immediately, not only on a pilot project but a full-blown program, giving people like yourself access to the workforce without any discrimination?

**Ms Balakrishnan:** As a next step, that's what we were going to ask, that they implement it quickly. It's going on; of course probably that would have been our next request of the government, that also.

**Mr Curling:** Let me just follow the debate. You said, "As a next step." If you get the employment equity in place first, do you feel, as it stands, that, although we welcome the presentation of the employment equity bill in the House being debated now, a lot is to be done in

amending it? Do you feel that as it is, if no amendment is made, this would be an effective bill, without any amendments?

**Ms Balakrishnan:** I think so, because they have called for recommendations from the public and the designated groups, so they are trying as much as possible to make it effective. So I hope this will be effective legislation and that's what I have concluded in my presentation.

**The Chair:** Thank you, Mr. Curling. Ms. Tilson. I beg your pardon. Ms. Witmer.

**Mr Callahan:** Is there something we don't know about, or what?

**Mrs Witmer:** Thank you very much for your presentation. We've actually had a number of presentations from the Sri Lankan community, and it's become I think abundantly clear that certainly those individuals are highly literate and very well educated and still feel that they have been denied opportunities to employment. I appreciate the comments that have been made.

You've indicated that you would remove the exception and include all employers in the act. When you say that, are you saying everybody above 10 employees?

**Ms Balakrishnan:** All employers, whoever it may be, whether two employees, three employees. At least it should be included in the act that they have to submit a report of the status of the employees, with the salary and what their position is and so on. They cannot implement numerical goals to those employers, according to the employment equity legislation. However, they can set up some other guidelines for them to see whether the employees are being treated equally, respectfully, and paid well and so on.

**Mrs Witmer:** Then all employers, regardless of size?

**Ms Balakrishnan:** Yes.

**Mrs Witmer:** Once you have one employee, you would be subject to the employment equity bill and legislation, you're saying.

**Ms Balakrishnan:** Yes.

**Mrs Witmer:** You want to reduce the implementation period for the smaller workplaces. Why would you suggest that this would happen?

**Ms Balakrishnan:** That's why I mentioned and I have discussed in this recommendation 1 how the employees in smaller workplaces are being treated. If we let them have longer periods for these smaller employers, again, we are going to face the same problem. Rather, we can solve those problems. If you consider bigger places like Toronto Hydro, Ontario Hydro, they have already had employment policy in place. It may not be very effective to a 100% level, but it's easy for them to improve their situation, whereas smaller places which have never had any implemented

employment policy should initiate right away and set up a plan within a short period to show some improvement.

**Mrs Witmer:** There's been a recognition by some presenters, and I think even this morning by one of the unions, that certainly with the small amount of turnover in the workplace, given the present economic situation in this province and the fact that employers aren't going to be hiring many people, it could take—I think the figure this morning—nine years before we see any changes. What is your response? Do you recognize that there is very little turnover in employees at the present time?

**Ms Balakrishnan:** Okay, if they're around, that might turn over with employees. But I'm saying if it is slow, then it's much easier. Even the personnel offices don't have much work to do, there aren't that many employees in the company, so they can establish policies and place this one in order so that when the economy gets better they can start implementing that one immediately.

**Mrs Witmer:** So you recognize that it could take some time.

**Ms Balakrishnan:** Yes.

**Mrs Witmer:** I guess, finally, you've indicated that somehow we have to provide access and participation for individuals who don't belong to a union or who may be unemployed. Do you have any specific suggestions as to how we could reach those individuals? I think it is important that they be included.

**Ms Balakrishnan:** Yes. It could be racial minority groups representing a certain racial minority group or some professional groups which have—but there are some professional associations. They have a licensing group as well as the professionals' welfare group, so they can represent them for those type of people.

**The Chair:** Mrs Witmer, we ran out of time. Mr Winninger. There are three speakers, by the way, in the event that you want to leave room for others.

**Mr Winninger:** It was indeed a pleasure meeting you a few months ago, and I'm quite surprised you still remember. For those who don't know, the Attorney General is responsible for the engineers' legislation and that was an important evening where many new Canadians received their licences to practise. I understand that there's a lot more work that can be done in promoting access to the professions. I'm sure you would agree with that.

**Ms Balakrishnan:** Yes.

**Mr Winninger:** There is a question I have for you, though, around your recommendation regarding subsection 11(1) and the identification of members of the designated groups. Given that the definitions are provided in the regulations and the whole framework is one of self-identification, some people have suggested that self-identification is important to protect the privacy of

members of the identified groups. Other critics have suggested that this might lead to abuse because people would self-identify to qualify under the provisions of Bill 79. Could you comment on that?

**Ms Balakrishnan:** You mean personal identification, for an example, in a survey when they take it? Whether I say or not, they are going to identify me as a visible minority, and also, even if I don't go there in person, when I send my résumé, obviously they're going to see I'm coming from a visible minority. So I don't have any problem identifying myself personally as a visible minority or a female or whatever it may be. If it is going to benefit in overall my career, as also in overall the whole of the province of Ontario, I have no objection at all about that issue.

**Mr Winninger:** In general do you think that people will be hesitant or fearful about identifying themselves as a racial minority?

**Ms Balakrishnan:** I cannot comment for other people, but as far as I know, in overall I can see outside, whether I say or not, from the accent, from the name and everything. Other people are going to identify somehow or another. So I don't think there is any reason for them to fear this identification.

**Mr Winninger:** And quite clearly you're in agreement that there is a need for this kind of legislation and you speak from your own experience in the engineering community. You'd like to see some changes in the legislation, but you do affirm its principles.

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**Ms Balakrishnan:** Certainly I do, yes. By making these recommendations, I think we can make the legislation more effective and implement it as soon as possible.

**Mr Winninger:** I agree. You've made some very constructive recommendations. Thank you.

**Ms Harrington:** I also want to thank you for this extremely good brief with your list of very specific recommendations, because this is the stage we're at now; we're looking at the bill and seeing how we can make it work better. So I certainly thank you for this.

Your suggestions here about reducing the time lines for companies with 100 employees etc to the 18 months I find interesting, and I don't see why that really wouldn't work; your concern about access for non-unionized employees and your personal story about being on a contract basis?

**Ms Balakrishnan:** A sessional job, yes.

**Ms Harrington:** A sessional basis, and feeling that these people should have access and protection and involvement.

I wanted to get to my main concern, I guess, today, your recommendation 1, and that is for small employers. We've heard from some businesses that they feel it's going to be an undue hardship on small business, that it



will take time and paperwork and that small businesses in particular would find it difficult to comply in that sense of the red tape involved. What's your view with a very small business, say, five employees, or up to 25?

**Ms Balakrishnan:** Initially the paperwork might be a little more, but when considering the number by number they are very small, so it will not take much time for them to do the process. But once they have started the process, I believe there will be more input to them and assistance from the Employment Equity Commission and the employment equity agencies, if they were willing to get assistance from them. They can easily implement that.

**The Chair:** We ran out of time. Ms Balakrishnan, we want to thank you for coming and to congratulate you for the diligence with which you've applied yourself in writing this submission.

**Ms Balakrishnan:** Thank you very much.

#### VIETNAMESE ASSOCIATION OF TORONTO

**The Chair:** Vietnamese Association of Toronto, Linh Tran. Mr Tran, you have half an hour for your presentation. I hope you'll leave some time at the end for questions and answers as we did with previous presenters.

**Mr Linh Tran:** Okay, very good.

**The Chair:** Please begin any time.

**Mr Tran:** Mr Chairman, ladies and gentlemen, my name is Linh Tran. I'm the vice-president in charge of external affairs and culture. I'm here to represent the Vietnamese Association of Toronto. I would like to bring up a few concerns in reading through Bill 79, but before I do that I would like to provide some organizational background of my organization.

The Vietnamese Canadian community is one of the newest in Canada, having been formed after the Vietnam War ended in 1975, the year that South Vietnam collapsed, forcing thousands of Vietnamese to flee their homeland. The community is primarily comprised of refugees and immigrants sponsored to Canada by the federal government, relatives, religious institutions and private groups.

The Vietnamese Canadian population in Ontario is continuously increasing since Ontario possesses a dynamic multicultural nature and the largest Vietnamese community in Canada. At the moment there are over 65,000 Canadian of Vietnamese descent, origin, residing in the province of Ontario. During the six years between 1985 and 1991, Canada has welcomed some 47,000-plus Vietnamese immigrants. This is according to immigration statistics in 1991. Approximately about 31%, 32% of these immigrants chose Metropolitan Toronto as their home city. This is also according to the integration needs assessment report of the Vietnamese association in June 1993. With other Vietnamese Canadians who came to Canada before 1985, these immigrants comprise

a relatively large population in great need of services, including employment-related services.

Founded in 1972, the Vietnamese Association of Toronto has developed from a volunteer-based socialization group to a non-profit social service provider for over 60,000 Vietnamese Canadians in Metro Toronto. The Vietnamese association has been the only linguo-specific multiservice organization serving this population for the last 21 years. It is financially supported by all levels of government, the United Way of Toronto, Levi Strauss and Co (Canada) Inc, Ontario Trillium Foundation etc. Its 15 full-time-equivalent staff are working on 15 different major projects and programs such as anti-racism, community participation, integration needs assessment and service development and so on and so forth. The association assists Vietnamese immigrants to cope with adverse situations with services ranging from housing, employment referral and placement, family counselling, language training, advocacy, outreach, interpretation etc. It provides services to over 10,000 clients annually. Its clientele comes from all municipalities across Metro Toronto and its vicinity. That's all the way from Mississauga, the town of Vaughan and certainly Scarborough. Vietnamese Canadians are recognizing the Vietnamese Association as a leader in providing culturally sensitive and linguo-specific services to them and as their representative in dealing with issues related to settlement and integration in Canada.

Now I would like to go on to the need for policy and implementation of employment equity.

One of the most critical and persistent issues that we have to deal with has been employment. Due to various reasons, including discrimination, the majority of our employed members are undertaking low-paid jobs in factories or restaurants. The 1986 statistics show the Vietnamese are among those ethnic groups whose incomes are the lowest in Canada. Only about 2.6% of Vietnamese Canadians earn over \$30,000 annually. This also holds true for many other southeast Asians, whose average employment income is about \$20,000, compared to \$26,000 or \$27,000 for the total labour force. The 1986 average annual income of a Vietnamese was \$12,000, in comparison with the Metro average of about \$20,000 to \$21,000.

Now I'd like to bring out some of the barriers to employment.

The first one: Our experience indicates that whereas language skills may play the most important role in newcomers' route to successful settlement in Canada, they are the very ones that the majority of Vietnamese-speaking newcomers lack:

"About 40% of immigrants have trouble with official language skills. This is especially true of immigrants whose mother tongues are Chinese, Vietnamese..."

This is quoted from a social report for Metro, July 1992.

Because of this, access to essential services and training programs has remained a chronic problem for them.

Second, the lack of Canadian experience and the lack of recognition of previous experience for those who recently settled here in Ontario.

The third issue is that the lack of knowledge relevant to Canadian life, combined with the incapability to overcome the burden of discrimination, have historically and unfairly victimized many Vietnamese Canadians. As addressed by Madam Assistant Deputy Minister Anne-Marie Stewart of the Ontario Anti-Racism Secretariat on March 19, 1993,

"Some obvious patterns of systemic racism include: racial minorities concentrated in low-paid job ghettos, racial minority and aboriginal youth with low self-esteem and low academic achievement...persistent family violence, drug abuse and crime in racial minority and aboriginal communities."

This is perfectly true in the case of the Vietnamese Canadian community.

Many members of the Vietnamese Canadian community have for long been vulnerable to racist incidents and injustice. Explaining why a first offender was sent to prison on a relatively minor offence, Toronto's Judge Anthony Charlton said:

"In Toronto, in these courtrooms, sometimes I sent young men from Vietnam to jail rather severely on offences.... They've been in Canada a short time, they've been in Canada a year or two or three, and I have to work out a kind of sentence that appears to have no bias.... I lay out some severe sentences that perhaps wouldn't apply in the same set of facts with someone who'd been in Canada 20 or 30 years."

This is quoted by my executive director in "Investigate This Judge," editorials, Toronto Star, in April 1993.

Now I would like to move on to the opening statements.

Many of the aboriginal people, persons with disabilities, racial minorities and women face discrimination. Consistently not hearing about job openings, being overlooked in a job competition or passed over for promotion are so common that the practices seem to be built into the way many of the employers do business. They go beyond individual acts of prejudice or meanness. This kind of unintentional, built-in discrimination is called systemic discrimination.

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Individuals cannot fix systemic discrimination with individual complaints to change discriminatory business practices. Equity-seeking groups see employment equity legislation as a giant remedial order to fix or to ameliorate the systemic discrimination in all Ontario work-

places. It is an extension of human rights laws we already have.

Now, Bill 79 calls on employers and employees to engage in a process of planning to get rid of the barriers that keep these designated groups from fully participating in the workplace. Once the parties identify these barriers, they ought to develop a plan to remove them and change their employment practices to better suit the groups mentioned. The plan should set goals and timetables for making this workplace reflect more of the composition of the community where it is located.

We support these objectives, that is, the Vietnamese Association of Toronto. We also support employment equity legislation. We call on the committee to recommend changes to make Bill 79 effective and enforceable. However, some of the sections in Bill 79 and the regulations should be clarified further so that our goals of achievement of employment equity would be adequately met.

I brought with me the three perhaps most important issues that would be raised that we hear over and over again from our organization.

The first issue is the establishment of numerical goals and timetables. We strongly believe that the acts and the regulations are ineffective without measurable and enforceable targets and objectives. The regulations do not appear to have specified numerical goals and timetables. This, in our opinion, will lead to the situation where employers have the law at their mercy.

Subsection 50(2) of Bill 79 provides in general that the goals shall be determined with reference to percentages approved by the commission. The regulations, however, not only fail to develop this principle but they also omit it completely. We ask that the regulations be amended to include the percentages and timetables which are to be approved by the commission.

The second issue we have here is timetables. With reference to timetables, the regulations again fail to respond to the principle that Bill 79 has brought forth. "Reasonable progress" referred to in the regulations obviously cannot substitute for the timetables which are essential for any real improvement in employment equity. We ask that the word "timetables" for reaching numerical goals be reinstated in the regulations.

The third and very last issue we have would be the review of employment policies and practices. This is in the regulations. Now, an important method of achieving employment equity is the identification and removal of discriminatory barriers that are used to prevent qualified people from attaining, retaining jobs or getting promotions.

Section 10 of Bill 79 fails to provide sufficient guidance as to which policies and practices should be reviewed. Similarly, subsection 14(6) fails to provide specific terms for dealing with the special needs of



members of the designated groups. We ask that Bill 79 be amended to include the determination of job qualifications. These qualifications must be spelled out in detail, and I underline "detail" because we want to put that in, and must not include the requirement of Canadian experience.

We also ask that section 14 of the regulations be amended to include:

"(a) Work-related language training for those employees who otherwise have met all the criteria for promotion; and

"(b) A public education program be conducted to educate employees about the Canadian employment system, including the Employment Equity Act, the Pay Equity Act, the Employment Standards Act" and so on.

We would like to reiterate our stance regarding the Employment Equity Act as follows:

Bill 79 and the regulations are not "too strong," as criticized by some other sectors in our society currently. In fact, it simply reaffirms the basic rights of every Canadian regardless of his or her physical status, origin, race or gender. It also makes a lot of economic sense in involving everyone in the process of making our province prosperous and fair.

That concludes my presentation.

**The Chair:** Thank you, Mr Tran. Six minutes per caucus, and we'll begin with the third party.

**Mr Tilson:** Thank you, sir. Your thoughts are appreciated. You've obviously spent some time on this presentation.

From the Vietnamese perspective, I will say the main message you seem to give is that both the bill and the regulations lack details, and I agree with you.

You mentioned what I call the quota section, subsection 50(2), which talks about how numbers and percentages can be set. Yet we don't know what those are or indeed how they're going to be calculated. We don't even know what "community" means. We don't know whether a definition could be different for different occupations or different jobs, I suppose. We don't know whether the census data are going to be used. We really don't know anything.

My question to you is, is it possible that these unnamed definitions, these unnamed percentages of non-whites, for example, could in fact discriminate against individual non-white groups, such as Vietnamese?

**Mr Tran:** No. This is actually in the same line. We would advocate that the commission or the tribunal would consult with an advisory committee, for example, that is set up to do a population study that does not give any kind of bias based on the employment population. Let's just say a company has, say, 10% of its employees belonging to a certain designated group. Then what we

want to do is have a certain percentage perhaps worked out by certain formulae.

**Mr Tilson:** How do you get to that first group, though? How do you get there? How is that calculated?

**Mr Tran:** The company can do a general survey of all the employees—

**Mr Tilson:** Yes.

**Mr Tran:** —and ask them whether or not they would like to be identified with that particular—

**Mr Tilson:** What if they're all white?

**Mr Tran:** Then they have the option of stating that there's no such need for that particular percentage of that designated group to be there. They have the right to tell us what they find in their studies.

**Mr Tilson:** How much time do I have, Mr Chair?

**The Chair:** Three minutes or so.

**Mr Tilson:** Mrs Witmer has a question.

**Mrs Witmer:** You've indicated here that one of the barriers your community faces is the issue of language.

**Mr Tran:** That's correct.

**Mrs Witmer:** Certainly that's a barrier that many people moving to this country do face. Your suggestion is that the employer would be responsible for providing some of that language training in the workplace.

**Mr Tran:** Yes, we would like to see that implemented.

**Mrs Witmer:** What responsibility do you see the government having? I guess I personally believe that one of the key barriers to fairness and equity, in the hiring process as well as in promotion, is the educational and training barrier and language barrier. Obviously, there are steps that need to be taken. What would you suggest?

**Mr Tran:** I would suggest a built-in training program offered by the companies whereby, because of the joint benefits and responsibilities of the government and the companies, we would like to see the government provide or subsidize part of the money for such training. Ultimately, in the long term, it is the entire country that would benefit from such training.

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The companies certainly should chip in because it is an educational program whereby all of the employees will benefit, and hence the productivity and the quality of that company would be raised.

I don't think it would be unreasonable to advocate a user fee. The employee might need such a training program to be better integrated into that particular group of employees, to be promoted, to create a sense of fluidity in the daily work with the rest of the Canadian society, the general group. So a user fee wouldn't be out of the question.

**Mrs Witmer:** So you're saying then that those accessing the language training would pay a fee.

**Mr Tran:** Nominal fees of some kind, yes.

**Mrs Witmer:** So really what you're looking at is a very cooperative approach between the employer, the government and the employee.

**Mr Tran:** I think that would be the fairest system I can think of, yes.

**The Chair:** I'm sorry, we ran out of time. Mr Fletcher.

**Mr Fletcher:** Thank you for your presentation. Just to continue along the lines, as far as people being given the opportunity to learn the language, I know there are a lot of employers throughout the province who do offer English in the workplace. That's only after you have the job, of course, and the first step—

**Mr Tran:** Exactly, yes.

**Mr Fletcher:** What employment equity is trying to do is to make sure you get that first step, the foot in the door, to get the job so that you can have the job. Once you get through the door, then we can start working on the education as far as English in the workplace.

We are doing a lot of other things right now, as far as trying to get rid of some of the discrimination that goes on in our education system, through the de-streaming issue, not having children streamed into certain areas and also with the anti-racism curriculum that we have.

I read your brief. I was looking at the establishment of numerical goals and timetables. Are you asking that the government actually set out the numbers that a company should have? In other words, for company A you have to hire 25 individuals of a certain minority group or disabled persons with disabilities. Is that what you're saying?

**Mr Tran:** No. That's something I must clarify. I'm not advocating for companies to set out quotas to achieve. I don't want them to be so result-oriented that they forget what they're after.

I'm looking at companies or employers setting up their own goals of achievement in such a way that would better reflect the community they're in. That would allow them more flexibility to work with, to move around, such as doing a need assessment and saying, "Okay, in this particular number of applicants I have advertised in sign language or in special language and I have no response from, say, the visually impaired." Then they have the right and the flexibility to say, "Okay, look, I have no one applying for this job, but I did advertise in such a manner to get the employees to come to work for us."

So the timetables and the numerical goals should be set at least in the regulations, not in the bill, so that each of the companies or employers has the flexibility

of setting its own, depending on the needs assessment in the community it's in.

**Mr Fletcher:** Okay, I understand.

**Mr Tran:** But not quotas, because meeting the quotas might be just filling in numbers without seeing the quality of the people who actually work in that, and that's not what we want.

**Mr Fletcher:** You don't want to just fill in slots and say: "There we go. We've done it."

**Mr Tran:** No, definitely not. We don't want to see that.

**Mr Fletcher:** I agree with you, and I agree with you wholeheartedly in your presentation, that if we don't start using all of our people, we're going to be in big trouble.

**Ms Harrington:** In your presentation, you say that the removal of discriminatory barriers is very important, and I certainly would agree with you, and you ask that in the bill the government provide sufficient guidance as to which policies and practices should be reviewed. I'd like to get into that a little bit.

I also want to mention another statement you made here, and that is that the bill should include the determination of job qualifications, that these must be spelled out and "not include the requirement of Canadian experience."

We'll start with the first one then. I think what we have done is left it open as to what policies and practices could be seen as barriers. I'm sure there are many that we have not even considered that could be barriers for different target groups. What would you recommend we put in as to which policies are in fact barriers?

**Mr Tran:** All right, what we're mentioning here is that upon either an interview or hiring, some of the people who were trained in Vietnam, for example, who had all the qualifications of being hired or being promoted—the only thing they probably would be lacking is either the ability to verbalize or perhaps speak English with a certain kind of accent or not a perfect Canadian accent, for example, and we don't want to see that as being an excuse to exclude them from the workforce or to exclude them from any kind of job that they are well qualified for.

**Ms Harrington:** So you're asking for a list of the barriers?

**Mr Tran:** Exactly.

**Ms Harrington:** What I think we're saying is that maybe we make a list, but there's always other ones out there that probably should not be ignored. They're so insidious that they could be hidden, they could be anywhere and they're still barriers.

**Mr Tran:** At least the ones that are spelled out, either in the regulations or in the bill, for that matter, would eliminate the need for using those as an excuse.



At least, say, for example, there's a finite number of, 100 excuses being discriminatory to exclude this person from the workforce. Now, if the bill listed 50, then at least they only have another 50 to work with and then we will slowly identify those as barriers and we will slowly tackle it bit by bit until the day they are removed.

**Ms Harrington:** Could you—

**The Chair:** Sorry, we ran out of time.

**Mr Curling:** Mr Tran, thank you very much for your presentation. Because of the short time I'm going to leave a time for my colleague here for the last question.

What I read your first recommendation to talk about is establishing numerical goals and timetables. Let me quote you a bit: "We strongly believe that acts and regulations are ineffective without measurable and enforceable targets, objectives." From time to time we hear inside here about goals and timetables, but, "Please don't use quotas itself."

I don't know what is so frightening about all of these wordings themselves but, again, these timetables and goals are being established by the employer. Why would you have an objective because eventually, if, at the end of the day, the employer does not meet the timetable or goals, and it is therefore that they did not meet the quota they set themselves up to accomplish, is it such a bad thing to say "quotas"?

**Mr Tran:** No, it's not bad to say "quotas." Quotas are a means of achieving these numerical goals and that's fine. But quotas should not be a means whereby you just fill in the blank, just saying, "Okay, I now have to hire 10% of my workers being one of the members of the designated groups," be it female, Vietnamese or any other racial minority group. But at least the company would have its own quotas, depending on its own assessment. That allows them more flexibility, more realistic goals to achieve, than merely setting up, "Okay, I'm going to try to hire 10%," and present this to the government and say, "Okay, it looks good." But then, at the end of the year, you only achieve 1%. At least in the goals and timetable aspect I think they can explain why they could not achieve what they have set out to do.

**Mr Curling:** If there was time, I would allow it to proceed, but one other quick question.

**Mr Tran:** Okay.

**Mr Curling:** Subgroups: There are people who have presented here and have said that they have been excluded because they are being just categorized as a visible minority. Do you believe that groups should be

identified either in the legislation or the regulations as subgroups and say, "Visible minorities are," and those subgroups be defined in there, who are the visible minorities?

**Mr Tran:** No, they should not be defined as such. The employee—she or he—should be able to self-identify with such a group. Say, for example, if I am one of the workers in the thousands and, okay, the company said, "You don't have to identify with but you do have a choice to identify yourself with that particular designated group," then they should be given that choice of being chosen to be one of the groups.

**Mr Callahan:** We've had presenters here who have wanted to extend this legislation to all employers, regardless of what size. I think it's your community, perhaps it's the Korean community, that there's a very large group of mom-and-pop type of operations. Does that hold true in the Vietnamese community?

**Mr Tran:** Actually, from my very own experience of dealing with the people from within the communities, I wouldn't say a large percentage, perhaps no more than 30%, 40%, no.

**Mr Callahan:** Okay. You'd agree, though, that those—or at least the operations that I've seen in my community, not just by people in the Korean community or the Vietnamese community but in a whole host of communities, the place is run by the family, the husband, wife and the kids. So this suggestion that it should be applicable to all employers would literally devastate or could devastate those groups.

**Mr Tran:** Actually, at the board of directors' meeting, we did not bring up that issue so I cannot speak on behalf of everyone. However, we did not have any reason to believe—or any members of our board bringing up such an issue. They have agreed with the range, the limitation range of 50 to 99 being small employers, and Bill 79 not being applicable to smaller employers of less than 99.

**Mr Callahan:** They have enough rules with GST, PST, filling out forms for everything under the sun, without having that.

**The Chair:** Mr Tran, thank you for your presentation and participation here today.

**Mr Tran:** Thank you, ladies and gentlemen, Mr Chairman, for giving me an opportunity to voice my community's concern.

**The Chair:** We appreciate it.

This committee is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1652.











*Continued from overleaf*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

\***Chair / Président:** Marchese, Rosario (Fort York ND)

\***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

\*Akande, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

\*Curling, Alvin (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

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Malkowski, Gary (York East/-Est ND)

\*Mills, Gordon (Durham East/-Est ND)

\*Murphy, Tim (St George-St David L)

\*Tilson, David (Dufferin-Peel PC)

\*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Callahan, Robert V. (Brampton South/-Sud L) for Mr Chiarelli

Carter, Jenny (Peterborough ND) for Mr Malkowski

Fletcher, Derek (Guelph ND) for Mr Duignan

Frankford, Robert (Scarborough East/-Est ND) for Ms Harrington

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

### **Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service

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## Legislative Assembly of Ontario

Third Intercession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 24 August 1993

# Journal des débats (Hansard)

Mardi 24 août 1993

## Standing committee on administration of justice

Employment Equity Act, 1993

## Comité permanent de l'administration de la justice

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Lisa Freedman

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 24 August 1993

The committee met at 1005 in room 151.

## EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

## IRANIAN COMMUNITY IN ONTARIO

**The Chair (Mr Rosario Marchese):** I'd like to call this meeting to order. I'd like to welcome the Iranian Community in Ontario delegation and wish to say to you that we have half an hour for your presentation. Delegations tend to leave about 15 minutes at the end, possibly longer, for questions and answers from each caucus. You may want to consider how long you want to do your presentation. Please introduce your colleagues and begin at any time.

**Mr Bijan Hassanzadeh:** First of all, I'd like to thank the panel for giving us this opportunity. I'd like to introduce Mehrangese Shahmoradi on my left from the Iranian association, Mehdi Dashti and Nazer Nadernejad. Each one of them has been in Canada for a number of years and has experienced a different degree of difficulties that we associate with. We strongly believe that employment equity, if it's made stronger, would tackle a lot of these typical problems.

I'd like to start with my presentation, which is a selected aggregate of more submissions to yourself.

The Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms both require equal treatment without discrimination. They further state that activities undertaken in order to improve the conditions of disadvantaged groups are not a violation of the right to equal treatment. In other words, it is justifiable to use remedial measures to reduce the disadvantages experienced by employment equity designated groups. These two fundamental Canadian laws both recognize the need for employment equity and make provision for it.

The Iranian community, by virtue of its experiences, recognizes the need for strong, mandatory employment equity legislation to be implemented in the province of Ontario without delay. Such legislation would enable individuals to compete on equal terms, and as such would not compromise the merit principle; rather, it would enforce and ensure it.

Our brief is not meant to be a full analysis of the act and regulations, as we do not have the resources to

complete such an undertaking. We have concentrated our efforts in translating the details and implications of the act for publication in our daily and weekly community newspapers. In addition, we have plans to continue to raise awareness of the importance of strong employment equity legislation via our community newspapers and radio and television programs across Ontario.

We have also examined the analysis undertaken by the Alliance for Employment Equity and the Ontario Council of Agencies Serving Immigrants, OCASI. We have been able to identify with their analysis and recognize the importance of the issues being raised to the effectiveness of employment equity legislation. We support the stance taken by the aforementioned groups and the suggested amendments they have proposed.

We understand the contents of the act and its implications for our community. In this brief—the submitted brief—we intend to address some of the areas of specific concern to us in light of the employment experiences of members of our community.

Iranian men and women seeking employment in Ontario find themselves unfairly and adversely affected by employment systems and practices. Like other disadvantaged groups, they face employment barriers which have impeded their ability to maximize their economic contribution to their adopted homeland.

A significant proportion of the Iranian population in Ontario are competent and experienced professionals who have been educated to university level. The lack of recognition by Canadian institutions and employers, both public and private, of their previous work, experience, education and training is consistently identified as posing one of the most significant systemic barriers preventing full participation in the labour market.

They are further frustrated to find that barriers such as discrimination, racism, racial stereotyping, language and lack of recognition of professional credentials earned abroad have severely limited their opportunity to contribute fully to the life of the province. Iranian women are particularly disadvantaged, facing discrimination on both gender and race.

As a result, large numbers of our community have been marginalized in low-paying jobs, are under-represented in many occupations—or in areas where they are represented, it is at the lower levels—endure unnecessary financial difficulties and suffer emotional hardships. In addition, the Ontario economy has failed to benefit from the skills and has suffered the loss of technical expertise, underemployment and inhibited economic productivity and growth.

This type of systemic discrimination goes beyond individual acts of unkindness or prejudice and is built into the organization's way of doing business. It's very difficult for individuals to combat this type of discrimination via the Human Rights Commission of Ontario, because individuals are vulnerable to reprisals and retaliation from employers.

Sadly, we have seen many cases of discriminatory practices which originate within the Ontario public service itself. If the existing role model is failing, then it is clear that left to their own devices, employers will not implement or be accountable to enforce employment equity.

Only strong mandatory employment equity legislation will improve the situation for individuals who by virtue of their belonging to a particular group find themselves unfairly and adversely affected by employment systems and practices. Only strong mandatory employment equity legislation will tackle the problem of systemic discrimination. Only strong mandatory employment equity legislation would end the waste of skills and talents brought to this province by discriminated Iranian men and women. Only strong mandatory employment equity legislation will result in a stronger and more prosperous Ontario for everyone.

With regard to the act, I have the following comments to make: Within the act, there should be clearly stated criteria and implementational measures, especially those fundamental to advancing the principles of employment equity. In particular, we recommend that the definitions of the designated groups, numerical goals and timetables, qualitative measures, reporting mechanisms and compliance measures be included in the act.

Within the act, the issue of subgroups should be dealt with specifically. It should be dealt with through the definitional provision and also as a reporting and monitoring issue.

With regard to the employment systems review, I have the following comments to make: To achieve employment equity, the employment systems review should provide the minimum requirements for identification and elimination of sources of overt and systemic discrimination in employment policies, practices and procedures.

It is also necessary to replace the identified discriminatory barriers with positive and supportive measures, procedures and practices, and to develop an action plan with a strategy for organizational change which reflects the needs of existing and prospective employees.

With regard to the employment equity plan, I would like to make the following comments: The existing federal employment equity legislation has been in place for some years, with little or no progress towards achieving employment equity within federally regulated workplaces.

Bill 79 and its accompanying regulations allow employers to set their own goals, pick their own population data and define their own timetable to implement the employment equity plan. We will show that this legislation with its voluntary employment equity plan will not significantly alter the employment situation for the discriminated designated groups.

We believe it will take more than the goodwill of employers to fight barriers such as prejudice, racism and racial stereotyping, and to eliminate systemic discrimination. We believe only strong mandatory employment equity legislation which incorporates specific measurable goals, timetables and methods for removal of identified barriers will effect the required change in the status quo. This would enable an evaluation of employment equity plans to determine and adjust the levels of representation and utilization of designated groups within the workplace.

With regard to the enforcement and monitoring, I would like to make the following comments: Laws create rights, but rights are worthless without ways to ensure that those rights are upheld. To have strong mandatory employment equity legislation, the proposed act must provide for strong enforcement measures and clear and broad power of the Employment Equity Commission to monitor employers' progress. The act and regulations as they currently stand fail to set up the requisite mandatory framework for enforcement and monitoring.

Specifically, the regulations do not require employers to file any reports whatsoever with the commission. In the absence of any reporting requirement, it will be impossible for the commission to monitor the progress of an employer or to enforce compliance. Many members of the designated groups are employed in low-paying, non-unionized workplaces.

The fear of dismissal, minimal understanding and knowledge of their rights as they relate to employment equity and the lack of resources will cause overwhelming barriers to effective participation in the development, implementation and monitoring of workplace employment equity plans.

In conclusion, the Iranian community strongly supports mandatory employment equity legislation and applauds and supports the government of Ontario's political commitment to this principle. The implementation of employment equity would end the waste of resources, skills, talents and technical expertise of members of designated groups. Such legislation would enable individuals to compete on equal terms and as such would not compromise the merit principle; rather, it would enforce and ensure it.

We urge the committee to give careful consideration to the points raised in our submitted brief and to effect the changes required to ensure that this act will succeed in its goal to effectively eliminate both systemic and



intentional discrimination, and ameliorate conditions of employment for aboriginal peoples, people with disabilities, members of racial minorities and women in all workplaces across Ontario.

**The Chair:** We'll begin with the government members, Mr Winninger. There are four minutes and a few speakers on the government side.

1020

**Mr David Winninger (London South):** Thank you for your excellent presentation. I'm just going to deal with one specific issue that you raised, and that's the issue of subgroups being dealt with specifically.

I think you accept the fact that the mechanism called for in this act is one of self-identification. Self-identification allows a certain flexibility in what we define as a racial minority. If we were to itemize or list all of the different subgroups, are we not running a danger that we might be excluding people who are of racial minorities that may not be part of that list, or how do you see this working?

**Mr Hassanzadeh:** I can see not attacking that problem and what sort of problems it can pose through the experience that we've had. We have cases that are being currently investigated where the employer is putting forward an argument, "To look at my workforce, you see another 20 people within this section, 15 of them are racial minorities," and this particular person who doesn't belong to that group—incidentally, 15 of them are from that one particular subgroup—is being discriminated.

The argument is very simple. The fact that you uphold employment equity principles does not guarantee you will not discriminate against other racial minorities. If it is not addressed, the result of it is what we are experiencing, that certain racial minorities are not recognized to suffer discrimination and are under-represented in the workforce.

**Mr Winninger:** I think I agree with what you say, but how would we as a government go about collecting data on subgroups? Do you have any recommendations there?

**Mr Hassanzadeh:** I do believe that, through my own experience, most of the racial minorities are well aware of their situation within the community and have formed advocacy groups. I believe having a communication link with them is a starting point and I think it would very much enhance the understanding of discrimination and barriers these advocacy groups can put forward. That's my suggestion: connections with the community, connections with advocacy groups that represent them.

**Mr Winninger:** I see. Thank you.

**The Chair:** Mr Mills, one question.

**Mr Gordon Mills (Durham East):** Thank you, ladies and gentlemen—lady and gentlemen—for the

presentation and being here today. I found your concerns very far-reaching.

I know that the government is committed to fair and equitable legislation and I'm just wondering, what to you is the most important part of the legislation in so far as equity is concerned? What do you think that legislation has to contain most importantly to your association?

**Mr Hassanzadeh:** If you mean what sort of effects it's going to have within our community, I have—

**Mr Mills:** The strength of the legislation: What do you see?

**Mr Hassanzadeh:** The strength of legislation, as I was stating, should be really very simply—our belief is that numerical goals are very important.

**Mr Mills:** Numerical goals?

**Mr Hassanzadeh:** Are very important. Our belief is that a thorough understanding of barriers faced by designated groups are very important. Our belief is that monitoring implementation of employment equity is very important.

We are currently facing some cases within the Ontario public service where voluntary employment equity procedures are being implemented but it's not being enforced properly, and we are finding an upheaval fight in order to make them understand what the real problem is. It's left to the individual managers to take proper steps to reduce the stress that these guys are going through by being subjected to discrimination.

So I believe numerical goals, properly resolved, and in fact every aspect of employment equity are important. I cannot emphasize one against the other. I believe it can't be one against the other.

**Mr Mills:** They're all important to you. Thank you.

**The Chair:** Mr Curling and then Mr Callahan.

**Mr Alvin Curling (Scarborough North):** Thank you for your presentation. I just wanted to comment quickly on Mr Winninger's question to you, just that you give it some thought. I would maybe recommend to all the groups who come in and suggest about subgroups just to think about it a bit, about how many subgroups there are within Ontario and how one could deal with that. It is a very important question to this committee.

But I'd like you just to comment a bit and help this committee and help me to define what is called mandatory employment equity.

**Mr Hassanzadeh:** You want me to define it for you?

**Mr Curling:** Yes. To you, when you speak of mandatory employment equity.

**Mr Hassanzadeh:** As I just explained a few minutes ago, we are not emphasizing this mandatory employment equity just for mere saying it. We're saying it through the experiences we are having within the

community. There's already federal employment equity legislation—it's one in three—and it's not working. Another example of it is that under this government, which is more committed to employment equity than any other government, you have one-in-three employment equity being exercised in OPS, but we are still experiencing discrimination. These are real cases and they're being investigated, and they're not being investigated because of settling claims but because the existence is recognized.

I think mandatory implementation of employment equity can be achieved in many ways, and I think advocacy groups like Alliance and OCASI have put an excellent list of measures that we can make it mandatory, if that's what your query is.

**Mr Curling:** I don't feel that this government is committed more than any government to employment equity. I think all parties are committed to fairness in the workplace and I think they would like to see the potential of all being utilized. It's just the way one goes about it. I think that's what you're talking about. Some people feel they have a hold on all the good things of life and nobody else has. I think the Conservatives and the Liberals are just as committed as the NDP to this.

**Mr Mills:** So why didn't you do it when you were minister?

**Mr Curling:** And then you will get this, "Why didn't you do it?" As a matter of fact, it brings me to this point: There are certain things that must be done in order to bring about fairness in the workplace. Studies have been done, like Access to Professions and Trades, a study that has been done, and been praised by the present government too that it was needed, and when the time came it has not been implemented. Some wonderful recommendations are in there which would utilize some of the professional skills that you talk about in here.

Do you feel that that task force and recommendation should be implemented, because the fact is it would have released up quite a few of those professionals into the workplace, where the employer can say, "This qualification, this certification, is recognized not only by the government but by the professional organization; this recommendation has been done." Do you feel that this should be implemented immediately in order to get employment equity on the road?

**Mr Hassanzadeh:** You've made a long speech and I found some of the things that you're saying are very important that I'd like to address. There is very little time, but I think my stance is quite clear. We are not saying that the NDP only should implement employment equity, or Conservatives only should implement employment equity, or Liberals. If you're committed, if the Liberal Party is committed, if the Conservative Party is committed, all the better. What we are saying is the need for that mandatory employment equity. If it is

recognized by all parties, let's put hands together and help each other. Let it pass through and let it make it stronger than it is. Why then put forward barriers in order to make it weaker?

If you have other suggestions that can be implemented in order to make employment equity legislation stronger, by all means. You have the support of all designated groups that have been suffering for years because of the lack of this mandatory employment equity. We support Liberal government, we support Conservative government, we support NDP, as long as they go along that path. Let not the majority of the people—workforce—suffer any more, because it's not a myth. It's not something out of the imagination of certain politicians. It's tangible and it's real, and if in this global economy we really want to be competitive, we have to use the best resources available within our population. I believe it takes some time for politicians to recognize how things have been done wrong, and I believe if mandatory employment equity is implemented, the result of it would be excellent. It would be so good for the economy, for the employers, for these private sectors that keep shouting merit principles are being compromised. They'll see otherwise.

1030

**Mrs Elizabeth Witmer (Waterloo North):** Thank you very much for your presentation. I appreciate your sincerity as you put forward your argument.

We've been hearing from individuals who appear before the committee that they don't want special favours, what they're looking for is fairness and equity in the hiring and the promotion process. Would you agree?

**Mr Hassanzadeh:** I agree with that, and I think it's not just sufficient, the ones that you have listed. The problems are a lot more than what you have just mentioned. Barriers are extensive and the consequences of them are tremendous. I believe my submission elaborates on that further.

**Mrs Witmer:** Yes, you've done an excellent job in elaborating the barriers your particular community faces and I appreciate that.

**Mr Hassanzadeh:** Right. I don't believe it's just specific to our community.

**Mrs Witmer:** That's right.

**Mr Hassanzadeh:** What we've said in our brief is real experiences. This is exactly what we have experienced, and I believe it's not specific to our community. I strongly believe it's common to the designated group.

**Mrs Witmer:** I would have to concur with my colleague from the Liberal Party. I do believe very strongly that all three parties are very, very committed to equal employment opportunities. However, I think we have to remain cognizant of the fact that we can't suppress somebody else's opportunity in the interest of,



you know, giving somebody else special privilege, because then we're introducing a new set of inequalities and discrimination. So it's a very, very fine balance. I'm not sure that this legislation is really going to achieve equal employment opportunities for everyone in the province and I do have that concern.

**Mr Hassanzadeh:** I see, really, contradiction in what you've said in saying that you have to follow what your colleague said. I saw more commitment from your colleague with regard to the importance of employment equity.

I made it quite clear that employment equity is not an issue of discrimination.

**Mrs Witmer:** No.

**Mr Hassanzadeh:** It's not an issue of compromising merit. On the contrary, you're ensuring merit principles are observed that so far have been ignored. I believe the merit principles of designated groups for some time, for years, under the current federal government employment equity legislation had been ignored.

We're not just saying that. We can put cases before you that merit principles have been compromised. So I cannot agree with you that this employment equity is compromising merit principles, and as I said, existing—

**Mrs Witmer:** I didn't say anything about merit principles.

**Mr Hassanzadeh:** Right. You're saying that merits of one group against the other.

**Mrs Witmer:** No, I'm just saying we have to be very careful there's a balance here and we need to make absolutely certain that we don't suppress someone else's opportunity. It's a very delicate and sensitive issue, and I guess what I want to make sure is that at the end of the day everyone in this province is feeling very positive.

**Mr Hassanzadeh:** Oh, yes. That's why the emphasis is on the education of employment equity.

**Mrs Witmer:** Yes, and I would never suggest—but I'm glad to hear you say that the merit principle is extremely important because I would agree with you, and I know that people have been denied opportunities when they've certainly been very capable of assuming the responsibility. So I'm just saying it's a very delicate, sensitive issue and we have to tread very carefully.

**The Chair:** Ms Witmer, before you respond, Mr Tilson would like to ask a short question.

**Mr David Tilson (Dufferin-Peel):** Yes, a very brief question. You've spent some time on visible minorities and subgroups, and issues have been raised within this committee and outside this committee as to what a visible minority is. There are some Iranians who do not believe that they are a visible minority. There are some people of Greek ancestry, Italian ancestry and Israeli ancestry who up until now did not believe that they

were a visible minority; now it's been predicted they will. Do you have any comment on that?

**Mr Hassanzadeh:** Yes, I do. I disagree with you. I think what we are really escaping from is the principle of employment equity. What it is: You create designated groups when you impose discrimination. You create visible minorities when you do not make them included in the workplace.

**Mr Tilson:** But is someone a visible minority because of their nationality or because of the colour of their skin?

**Mr Hassanzadeh:** No, there are different criteria. If you want to say that somebody is not going to be discriminated against because their skin is lighter than another, I cannot agree with you. The visible minority definition needs to be addressed a lot more accurately than the way it is. We're not just talking about shades. We recognize very much the shade is very important as well.

Iran itself, the climate of it is such that at one place you have minus 40 degrees centigrade and at the same time you have plus 40 degrees centigrade. So you have a wide spectrum of light-coloured skin and dark-coloured skin. If you have spoken to the people in the north, they are white and they don't feel they're a visible minority. Just on that basis, that their skin is lighter, they're not a visible minority. But if you ask them, "Have you been discriminated against?" they will say, "Oh, yes, I am part of the designated groups."

**Mr Tilson:** But they're not—

**The Chair:** Mr Tilson, I'm sorry, we've run out of time. Mr Hassanzadeh and other members of the delegation, I want to thank you for a very informative presentation that you made to us today.

**Mr Hassanzadeh:** I'd like to thank the members of the panel for giving us this opportunity.

#### ONTARIO RESTAURANT ASSOCIATION

**The Chair:** Next is the Ontario Restaurant Association. I want to welcome you both. You have seen the previous delegation in terms of structure: half an hour, leave plenty of time for questions and answers, because I think we get the best dialogue out of that. Please begin any time.

**Mr Paul Oliver:** Thank you. The Ontario Restaurant Association welcomes the opportunity to discuss with the standing committee how Bill 79, an act to provide for employment equity, will impact our industry. As well, we would like to outline a number of recommended changes which we believe will improve the implementation of this legislation within the small business community and in particular the foodservice and hospitality industry.

I am Paul Oliver, president of the Ontario Restaurant Association. With me today is Constance Wrigley, our manager of government affairs for the association.

The ORA is a non-profit industry association which represents the restaurant and foodservice industry in Ontario. The association was founded in 1931 and currently represents approximately 4,500 members, representing 7,000 foodservice establishments. We represent both licensed and non-licensed restaurants, contract caterers, accommodation establishments, quick-service restaurants and many other foodservice establishments as well as educators within our industry.

The ORA and the foodservice industry have had a long-standing interest in the development of human rights and employment equity policy in Ontario. The foodservice industry has historically taken a leadership role in providing employment opportunities to unskilled and low-skilled workers and those individuals having difficulty entering or re-entering the workforce. The foodservice industry is one of the largest employers in the province of Ontario and is one of the largest employers of designated groups, especially women and visible minorities.

The restaurant and foodservice industry plays a very unique role as an employment training ground for the broader workforce. Approximately 30% of all members of Ontario's workforce today have had work experience in the restaurant and hospitality industry and in doing so have received important and valuable skills training. Very often members of the designated groups use the foodservice industry as an important entry point into the broader workforce. We believe it is important that the burden of government legislation does not become so great that employers are forced to reduce employment and job opportunities in Ontario.

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In addition to being a major employer of designated groups, many owner-operators within the hospitality industry are themselves members of these groups. The foodservice and hospitality industry has one of the highest levels of ownership and management responsibilities for women and visible minorities of any sector in Ontario. Because of the traditional ease in which individuals can open a foodservice establishment, as well as the supportive role played by franchising, many members of designated groups utilize the foodservice industry as their gateway to self-employment and business ownership which is denied in many other sectors of the economy.

As well, many members of designated groups look to the foodservice industry ownership as an opportunity to integrate family and work responsibilities and to employ family members. This is an important component of the foodservice industry management. However, it could be threatened under this proposed legislation.

We are proud of the positive employment and hiring practices that have been accomplished thus far in the foodservice industry. However, we share the recognition that there must be more done in Ontario's broader

workforce. In particular, in areas where systemic barriers prohibit employment for some members of our society, we believe that it is important that everyone be made aware of the barriers, both intentional and unintentional, which may disadvantage some groups within our society. We are concerned, however, that Bill 79 may not effectively address these problems and may have an unintended impact within small workplaces.

The ORA, while supportive of the objectives and principles of Bill 79, has a number of substantive concerns regarding the implementation of this legislation. In particular, we are concerned about the potential administrative cost placed on small and mid-sized employers, the potential for substantial confusion created by the implementation of this legislation and the limitations it may place on an employer's ability to hire the most qualified prospective employee based on merit.

The ORA believes that a number of these administrative problems need to be addressed prior to the passage of Bill 79. The ORA is committed to working with the government of Ontario to address these administrative issues and implement a positive, responsible and respected employment equity program.

**Ms Constance Wrigley:** Thank you. Good morning.

Members of the restaurant industry are concerned that the employment equity plan outlined in Bill 79 has a number of implementation problems relative to the foodservice industry. Many of these problems are related to the industry's unique characteristics such as high turnover rates, seasonal workforce adjustments, a high level of part-time workers and its geographical diversity.

These characteristics create a number of unique issues for foodservices operators such as the definition of "employer" versus "workplace"; the reliability and relevance of the workplace audits in workplaces with less than 50 employees; the legislation's treatment of mobile and seasonal workers; the failure to distinguish between full- and part-time employees; the implications of self-identification by employees; and the lack of clarity regarding hiring on the basis of merit.

The Ontario Restaurant Association believes that small business operators should be exempted from the cost and administrative burden created by implementing a formal employment equity plan. We believe that small business employers should be encouraged to adopt employment equity hiring practices, but not be legislated to implement a formal program. The ORA supports the decision by the government of Ontario to exempt employers with less than 50 employees from this legislation.

We are concerned, however, that this threshold does not adequately accommodate seasonal adjustments and the high degree of part-time employment. As well, this employee-based ratio is not compatible with the geo-



graphical diversity of the foodservice industry. We believe the threshold should be redefined as either 50 equivalent full-time employees or 100 full- and part-time employees.

The ORA is concerned about the potential confusion created by a terminology ambiguity contained in Bill 79. Currently, Bill 79 uses the definition of "employer" for the determination of employment equity. Since "employer" is a vague and confusing definition, it will create a number of unique problems within the foodservice industry.

In the foodservice industry there is a wide variety of ownership structures which do not clearly overlay the definition "employer." In the foodservice industry ownership comes in many forms including limited corporations, partnerships, franchisers, franchisees, temporary trust ownerships, umbrella corporations, joint family ownership and various other combinations of ownership structures.

This legislation fails to address or clarify how these various ownership structures, which are predominately representing the small business community, will be administered. To solve this serious problem, the ORA recommends that the legislation be amended so that "employer" is replaced with the term "workplace." By using "workplace," a clearer and more recognizable entity will be used for the application of the legislation.

Many multi-unit foodservice operations are comprised of individual operations of less than 50 employees but collectively are a larger employer. For example, how is a part owner of several individual and geographically distinct restaurant partnerships to be defined for the purposes of employer? Will this individual or corporation be considered the dominant or secondary owner if they are involved in several locations as a significant non-participating owner? Or how is a franchiser holding several locations in temporary trusteeship to be treated under Bill 79?

The use of "workplace" as a legislation definition would better and more clearly define the parameters for employment equity and will reduce the potential for confusion. Much of this confusion will be created by the geographical and ownership diversity that is characteristic of the foodservice industry.

As an example, if an owner had six or seven small coffee shops throughout Ontario, it is likely that he or she may employ over 100 full- and part-time employees, but at each location less than 20 employees and fewer than five full-time equivalent employees. Yet under this legislation, since each store is individually managed, the owner would be required to undertake seven workplace audits, undertake consultation with the employees in each workplace and develop seven different employment equity plans which would be reflective of each of the geographical regions in which each one of the stores is located.

Unlike most other economic sectors, the foodservice industry is very geographically diverse. Many operators have various autonomous restaurant locations spread throughout Ontario. These locations are often individually and locally managed and have different hiring practices and a different workforce composition which is reflective of the local community. Attempts to impose a province-wide, multiple workplace employment equity plan on a wide and diverse collection of autonomous foodservice locations would be impossible.

The current wording and interpretation of the act and regulations will create a situation where the administrative and financial burden of this legislation will be placed on small workplaces far smaller than 50 employees. Within our industry, it is conceivable that workplace audits will be required in workplaces with as few as five or 10 employees. The validity and reliability of this undertaking would be marginal at best.

The administrative and financial burden placed on this type of small operator to comply with this legislation is astronomical. Because of the problems created by the geographical diversity of operators in the foodservice industry, we encourage the committee to amend the legislation so that "workplace" rather than "employer" is used to determine the application of this legislation.

As well, the geographical diversity of foodservice operators creates problems for resolving potential employment equity complaints. Bill 79 suggests that employment by an employer must represent the local community. A restaurant chain of 25 locations, each with less than 50 employees, would find it impossible to do one collective employment equity plan for all of their individual establishments, especially if they were located in several very ethnically diverse communities. The plan in each of these locations would need to be done individually as per local census data; otherwise, employment hiring would not be reflective of the local community and hence would place the employer technically in non-compliance with the legislation. The cost, however, of doing individual plans would be prohibitive.

To avoid these difficulties, the ORA suggests that employment equity plans be required on an individual store or workplace level. This also could be addressed by redefining "employer" as "workplace," as previously mentioned. Employers who have central administrative or centralized employment hiring, however, should not be excluded from doing a multiple workplace plan provided it is viable and reliable.

#### 1050

In the restaurant industry, due to daily and seasonal fluctuations in sales volumes, it is very common for an employer to have many seasonal or part-time workers, which would artificially make the workplace appear larger than it actually is. If only raw employee numbers

were used to measure the size of a workplace for the purpose of compliance, as is currently proposed in Bill 79, restaurant operators will be systematically disadvantaged. To eliminate this potential unfairness, the Ontario Restaurant Association recommends using only full-time employees to determine if an employer should be classified as a small business. This calculation should also be used to determine employment levels for seasonal workplaces or workplaces with significant seasonal adjustments. We would hate to see a situation arise in which employers are encouraged or forced to eliminate jobs for students as a result of Bill 79.

In foodservice operations, there is a very high level of employee turnover, which is a result of easy entry and exit from the industry, part-time workers, part-time second income and seasonal adjustments. This high attrition rate casts serious doubt on the reliability and credibility of the workplace statistical audit required under Bill 79. It's highly probable that staff turnover can reach 40% or even 50% within the six-month period after the audit is completed and the reliability of the audit becomes void. Special consideration needs to be given to high turnover and seasonal workplaces.

The ORA is concerned about regulations contained in Bill 79 which require an employer to accept the self-identification provided by individual employees. While this is a positive initiative, it will create major implementation and compliance problems for employers. For example, if an employee who is a member of one of the designated groups chooses to not identify himself or herself as being a member of that designated group, the employer is placed in a difficult situation for compliance purposes, because even if they have undertaken positive hiring this will not, statistically, be reflected in the workplace audit. If employees refuse to identify their ethnic heritage and instead classify themselves as Canadian, for instance, which is common in census identifications, this legislation does not provide for this potential problem.

These difficulties associated with self-definition will also be prevalent in the area of categorizing disabled workers who, because of their outlook or as a result of existing workplace modifications, do not see themselves as disabled. Under the employee self-identification concept, employers who have already undertaken costly modifications to accommodate employees with disabilities will not be given credit for this self-initiated positive step. Provisions must be included in the regulations which would allow for double classification: one classification by the employee and another by the employer.

The last major concern of the Ontario Restaurant Association revolves around Bill 79's failure to clearly state that this legislation will not overrule merit-based hiring. Government officials have indicated that this legislation will not override or pre-empt the hiring or

promotion of the most qualified candidate. Unfortunately, Bill 79, as written, does not reflect this concept.

We believe that the legislation must be amended to clearly state that the hiring and promotion of employees will continue to be based on merit. Without this provision, we fear that the government and the groups it is designed to assist will face a severe public backlash.

We understand that the government of Ontario has decided to move forward with Bill 79, but because of the potential for significant implementation problems in the foodservice industry, the Ontario Restaurant Association strongly encourages the standing committee on administration of justice to take adequate time to address potential implementation problems before passing this legislation. In particular, we encourage the committee to amend the legislation to replace the term "employer" with the term "workplace." We appreciate the opportunity of appearing before you today and we welcome any questions you might have.

**The Chair:** Thank you very much. There are only three minutes left per caucus, which means one or two questions maximum per each. Mr Callahan to begin.

**Mr Robert V. Callahan (Brampton South):** I'm interested at page 4, where you have stated that visible minorities actually earn about 25% more on an hourly basis than non-minority workers in the restaurant sector. Why is that? Are you saying there that the visible minorities are full-time as opposed to non-visible being part-time?

**Mr Oliver:** Generally, what we find in the industry—and that came from an employment study that we had done, performed by an outside consulting firm—is because they're in the industry longer and they're able to move up to more senior positions. Also, they're not as represented in the part-time employment; they're more represented in the full-time employment.

**Mr Callahan:** I know this would probably be self-serving if you were to answer this question, but does this mean that within the hospitality industry, in any event, quite apart from any of the others, that visible minorities actually do not face barriers keeping them from moving up the ladder?

**Mr Oliver:** The statistics we've compiled would suggest that, yes.

**Mr Callahan:** Just finally, if I could, with the question of disabled people, you've raised what to me is a serious concern: that I don't think that people who have, say, a learning disability or perhaps a mild psychiatric problem are about to list that on their application for employment. Would you think that's a reasonable statement?

**Mr Oliver:** In that category, yes, but also—my father is disabled, but he certainly doesn't look at himself as disabled. He walks with a cane, but he can get around; complete mobility. His workplace has



modified the workplace so that he can do the job as well as anyone else. If you were to ask him whether he was disabled or not, he would certainly say no because he has no impediments in the workplace.

**Mr Callahan:** So this legislation wouldn't do anything for him?

**Mr Oliver:** If the employer came to him and said, "Are you disabled?," his answer would be no because he can do the job as well as anyone else, even though the employer's gone to great expense in modifying the workplace and modifying the job so that he can perform at 100% capacity.

**Mr Tilson:** Your comments are excellent, and I hope the government looks at some of your thoughts for potential amendments. I know our party certainly will.

I have one question for you. You have pointed out the uniqueness of the restaurant business or the entertainment business, specifically when you look at Chinese restaurants, Italian restaurants and so on, where part of the presentation is that culture. To enforce employment equity on some of those restaurants will be difficult for them.

I have one question for you, and that is specifically with how this will affect business, because some of the business groups have said that this legislation will indeed affect business. Your organization has come to us before, with the former Bill 40 legislation and similar pieces of legislation, and has been concerned about some of the tax legislation. Your presentation didn't deal directly with that. Could you comment?

**Mr Oliver:** Our presentation touched on it by addressing both the cost and the administrative burden, and that's of great concern to our members. It's actually becoming the top issue that members are identifying to us. They're spending more than 50% of their time now filling out government forms. They don't get into the hospitality industry or they don't open small business to become a servant to the government.

A lot of time it's getting to the point that we're either having people leave the industry because of it or just wholesale non-compliance with government legislation and they're waiting for the regulators to come and knock on their door. We've seen this with other legislation. They just can't keep up with the burden of paper and paperwork that they're expected to.

To tell an operator who's working 70 hours a week to keep the family business open that they've got to fill out this form and that form and a dozen other forms—it's filed away and it's never even looked at. We're seeing that now in the small business community, but it's growing even to the mid-sized establishments now.

**Mr Tilson:** This legislation will be a great boon with respect to the consultants, because most firms do not have human relations staff to fill out all these funny forms and now they're going to have to hire consultants.

**Mr Oliver:** In our industry, they won't hire consultants. They just won't do it.

**Mr Tilson:** What will they do?

**Mr Oliver:** They can't afford to go out and hire a consultant. The average restaurant in Ontario does less than \$500,000 in sales. We're talking a 2% or 3% profit margin today on those sales. That's barely enough money to support one individual, let alone hiring a contingent of consultants.

**The Chair:** Mr Tilson, sorry, no more time. Mr Fletcher, there are two other speakers in the event that you want to leave time for questions.

1100

**Mr Derek Fletcher (Guelph):** Then I guess I'd better start.

Thank you for your presentation. I understand the restaurant association's concerns about the administrative costs. I also recognize the fact that you probably hire more designated groups than most other organizations, and also a highly educated number, from what I understand from different groups which have come in to present. You are not at fault in any way, shape or form for where we are, and it's unfortunate that we have to introduce legislation to promote and ensure employment equity. As I said, it is not your fault; it's just been happening over the years.

When I look at the administrative costs, that I agree with. But if, as you suggest, we did break up the individual workplaces, can you see that also adding to the administrative costs of each location, if we break it up and each location is doing its own plan?

**Mr Oliver:** They will have to do their own plan now because most of them have autonomous hiring practices. For example, it's very common in our industry for a husband and wife who own a restaurant to own 75% of their son's restaurant and their daughter's restaurant, so the family will collectively own five or six, but they're run completely differently. An operator would hire in Ottawa very differently than they would in Kingston. They're going to have to have a different plan and the administrative cost of doing that is just astronomical. Or, with the example of the coffee shop with 10 employees per location, having six or seven coffee shops they're going to have to do six or seven plans.

The statistical validity, though, of doing a plan where you have the equivalent of five or six full-time employees and maybe 15 total employees—I don't know. Once you audit your workplace and you find out that you are weak in one area, how do you solve that? Do you then get one person for this group, one for another? You're at such a small level. I don't think the government's intention ever was to be doing the small coffee shop with 15 employees, but the way it's written now, that's what will happen.

**The Chair:** Ms Akande, one last question.

**Ms Zanana L. Akande (St Andrew-St Patrick):** I think the government's intention, actually, to follow along with what you were saying, is to affect employment in the province in every area in such a way that the employees would reflect the population that's there. When you talk about having many branches, many small coffee shops that are actually owned by one owner, who would ultimately make the decisions and the profit?

**Mr Oliver:** I would have to disagree about the owner making the decisions. As I said, it's very common for a family to start setting it up for relatives or their children, but it's also very common for an owner who has a successful restaurant and has a manager or an assistant manager who wants to go out on his own to buy in and put the money up for that person to get into the business. They may be a silent owner with 60% or 70%, but on the day to day they have zero management control over the establishment.

**Ms Akande:** But they are part owner and therefore would receive some of the profits.

**Mr Oliver:** Yes, but they wouldn't have any management control over the establishment; they would be a silent partner with in excess of 50%. They may have three or four establishments where they're the silent partner, owning more than 50% in three or four restaurants, but they have no control over them. This legislation doesn't deal with how a partnership structured that way would be accommodated.

**The Chair:** Thank you, Mr Oliver, Ms Wrigley, for the submission you made here today.

#### MAYOR'S RACE RELATIONS COMMITTEE OF HAMILTON

**The Chair:** The next submission is by the Mayor's Race Relations Committee of Hamilton. I want to welcome all three of you. Please leave plenty of time for questions and answers, if you can. Marlene Thomas-Osbourne, please introduce your colleagues.

**Ms Marlene Thomas-Osbourne:** This is Mark Haas, the chairperson of the mayor's race relations media subcommittee, and Mike Webber, the chairperson of the advisory council, also of the mayor's race relations committee, and I'm Marlene Thomas-Osbourne, the co-chair. We're all from Hamilton.

Our brief is going to be short as we were only given 30 minutes instead of 15 minutes, so we've made it as short as possible.

On behalf of the Mayor's Race Relations Committee of Hamilton, the committee and the advisory council endorse the employment equity bill as it is heading in the right direction where all Ontarians and indeed all Canadians will benefit from the implementation. But in order for this to happen, though, there should be more accountability and, as you said, more teeth to the bill.

It should not be left to the employers to decide when they should implement this bill but how, which would be the most effective way.

Some of the recommendations we have made, and we're going to be specifying mostly on implementation, enforcement and training:

Mechanisms should be put in place to ensure the implementation of the bill not on a volunteer basis by employer but by regulations set by the government.

Enforcement should also be regulated in the same manner as the implementation.

Training is crucial if Bill 79 is to be successful, and that's training for the employers. Employers should be trained in the most effective way to introduce Bill 79 to their individual place of employment.

It is also crucial that the employment equity plan, in accordance with the regulations, provide for the implementation of positive measures with respect to the recruitment, retention, promotion and training of members of the designated groups.

Movement should be recognized in the form of promotions, and we stress placements not only at the entry level but also at the senior levels.

Auditing of employers should be clearly stated.

We have in here monitoring, and monitoring we think should be done at least every six months to see that the bill is being implemented in the proper manner.

Bill 79 does not go far enough as it does not include employers with less than 50 people. All employers should implement some form of the bill in their workplace.

A small employer we believe should be identified as a company with a minimum of at least two people as it is agreed that they do have fewer requirements to meet in developing employment equity plans anyway.

For the bill to be implemented successfully and to ensure all employers are following the plan, a basic guide should be set by the government for all employers, where each employer will be allowed to modify the plan based on the number of employees.

Employers who complain of reverse discrimination should be educated in the hiring practices that have been used for centuries called "nepotism" and the fair and equitable form of hiring known as "employment equity"; ie, based on ability, not on colour, creed, sexual orientation or disabilities.

There cannot be a more suitable time to introduce this bill as employers, because of the recession, have more time to spare and therefore should take an in-depth look at the workplace and start the implementation so that when they start back in making profits again, things will be in place.

There are employers who will bring the argument that government has no right to dictate who should be hired



in their establishment. For those employers with such arguments—example, “This is a family-run business”—we would answer, “Families will operate, but without the masses to carry the business through, the business will fail and the masses always will include members of the target groups.”

A timetable should be set by employers and they should be held to this timetable with respect to the employment equity plan.

Employers should be encouraged to have a job skills bank inventory of employees.

We should encourage employees to update their skills in the event promotional positions become available.

Though we encourage lateral entry, every effort should be made to promote and use the skills that are available within the employer's present workforce.

Training should also include a proviso, a section, that training puts the onus on employers to bring to existing employees of the organization an understanding of employment equity.

Last, but not least, we would also like to include among the designated groups reference to gays and lesbians, who are also left out as one of the target groups.

1110

**The Chair:** Thank you very much. We have seven minutes per caucus. We'll begin with the third party. Ms Witmer.

**Mrs Witmer:** Thank you very much for your presentation. So you are a committee that reports to the mayor and the council?

**Ms Thomas-Osbourne:** Mayor's race relations; yes, we do.

**Mrs Witmer:** Yes, okay. So this presentation then has been seen by those individuals and you're representing the entire community.

**Ms Thomas-Osbourne:** The mayor's race relations committee, yes.

**Mrs Witmer:** You've indicated here that training is crucial if Bill 79 is to be successful and that training needs to be provided for the employers, and certainly that is going to be necessary. How do you see this training occurring, and who would provide the training? What type of mechanism would you see in place?

**Ms Thomas-Osbourne:** We have thought a lot about it, in very long terms, where workshops could be set up: The government could set them up, private companies could set them up, just so that the employers have some outlet where they could get some form of training to implement the bill, the way it should be done. But the onus should really be put on the government to give some form of training to get it going.

**Mrs Witmer:** Yes, I think if you're going to have some uniformity and also address some of the concerns,

it's going to be the government, and also you've indicated you'd like to see this implemented in a workplace that has two or more employees, and obviously those people would have to access that type of—you've said that enforcement should be regulated in the same manner as implementation. What would you see being done more than it presently is indicated to be done?

**Ms Thomas-Osbourne:** An employer should be given enough time and everybody should have a timetable etc, by what time the policy should at least be set to take place. If that's not done during monitoring, the employer should be charged because it is against the law; it's a bill and it's like any law. If it's not followed you're charged. They should be brought before the law.

**Mrs Witmer:** Okay, and you're saying the bill should not be voluntary, it should be mandatory?

**Ms Thomas-Osbourne:** Mandatory.

**Mrs Witmer:** Okay, you've indicated that you would like to see one more designated group added here. Did you give any consideration at all to including the francophone community?

**Ms Thomas-Osbourne:** Yes. We may have left some of it out. We're talking about anyone and everyone who would be discriminated against by that bill.

**Mrs Witmer:** Okay. What about the term "visible minorities" and also "disabled"? We've heard from some people within those two groups that they'd like to see subgroupings.

**Ms Thomas-Osbourne:** In the sense of?

**The Chair:** Mr Webber?

**Mr Michael Webber:** In terms of subgroupings, disabilities is a rather broad group, quite broad. Actually, our discussions centred around a group of people we commonly call small people and extremely tall people. I don't know who set the standard for average, but I imagine that in a day and age like this a person standing six feet or thereabouts would be, as a man, average, and a woman I guess would be five feet, seven inches or thereabouts.

**Ms Akande:** I don't know what's wrong with five foot ten.

**Mr Webber:** I really don't know myself.

**Mr Winninger:** I don't know if I agree with that.

**Mr Webber:** I certainly don't, but that's the general conception, of course, and we would like to protect those who don't seem to fall under those general ideas, but especially small people. We don't want to be called midgets or dwarfs or whatever. Let's just call them small people, and because of their obvious height disadvantage, in some instances, they certainly should be given special consideration. We don't have too many extremely tall people. I think of the basketball teams and all that. Of course, they have a special sector in

which they fit in very nicely, to my disadvantage. But in a normal, average workplace, persons standing seven feet tall and seven feet five are certainly going to be disadvantaged and we'd like to see them considered.

**Mrs Witmer:** When you were taking a look at some of the barriers that we presently face in the province, did you give any consideration to the fact that seniority rights could be a barrier within a unionized workplace?

**Mr Webber:** It was mentioned. We didn't go into it in depth. The provisions as they stand today with regard to seniority don't seem to be too awkward, from my point of view and our point of view. The regulations as they are today with regard to seniority and retirement requirements seem to be quite adequate for us.

**The Chair:** Mr Tilson, two minutes.

**Mr Tilson:** The issue of cost is mentioned periodically throughout these proceedings. The estimate for the budget for the Employment Equity Commission will be \$6 million. We've now witnessed controversial social contract legislation, the effect on municipalities' budgets, the effect on school boards' budgets; we know that with this legislation there will have to be either a human relations staff with respect to the city of Hamilton, possibly the school boards; we know there will be appearances before tribunals; we know there will be costs for surveys, all of that sort of thing. Have you advised, in your opinion, what the effect of this legislation will be on the taxpayer of the city of Hamilton for particularly the municipal area and the school board area as to, will this have an effect on the mill rate in the city of Hamilton?

**Ms Thomas-Osbourne:** Coming from the perspective of the mayor's race relations committee, any taxpayers' money that is spent to benefit Ontarians, Canadians, on the whole, is money well spent, and that includes anything that has to deal with employment equity, because we're talking about humanity.

**Mr Tilson:** I'm not asking that question. I'm asking whether or not you've had any estimate as to what this is going to cost the taxpayer of the city of Hamilton.

**Ms Thomas-Osbourne:** No.

**Mr Tilson:** You have no idea.

**Ms Thomas-Osbourne:** I don't work for the city of Hamilton, so I don't know. We're the mayor's race relations committee. We're not the city of Hamilton; we're not from the city council.

**Mr Tilson:** But you're advising the council of the city of Hamilton.

**Mr Webber:** Not necessarily the council.

**Ms Thomas-Osbourne:** Not necessarily, no.

**Mr Tilson:** Who are you advising?

**Mr Webber:** We're speaking on behalf of the mayor's race relations committee.

**Mr Tilson:** In other words, your thoughts have not

been directed towards what this is going to cost.

**Mr Webber:** No. We have to make it very clear that we're not speaking on behalf of the city council or the people of Hamilton as such.

**Mrs Witmer:** But you give advice.

**Mr Webber:** Yes, we will advise.

**The Chair:** Thank you, Mr Tilson. Ms Carter.

**Ms Jenny Carter (Peterborough):** Thank you very much. Following on from what was just said, I'd like to hear what you have been able to achieve in Hamilton. I take it that the city, as such, has made employment equity efforts. I'm wondering how these have so far benefited members of designated groups and what effect this has had on the quality of employees in Hamilton.

**Ms Thomas-Osbourne:** I'm an employment counsellor. I put people to work and I work directly with employers. I notice that with employment equity, with the employers who have done it and are doing it voluntarily, it is very successful and it's a win-win situation. That's what I personally have to say about it, because I am sort of front line because of my job.

**Mr Webber:** In regard to me, I have some connections with the school boards and I do know that their policies are in place. The Hamilton public school board has had theirs in place for a number of years, maybe two years. The separate school board has just recently accepted and passed theirs at the level of the board and it's going to be fully implemented, or at least steps are going to be taken to have it fully implemented.

But the record, on the whole, has been reasonably good in terms of employment equity. From that point of view, I believe that the city council, on the advice of, very often, the mayor's race relations committee, has done a great deal to ensure that these kinds of policies are already under way.

**Ms Carter:** Given the experience that you've had, information held by municipalities is available to the public under the freedom of information legislation. I wondered if you had any opinions as to what the effect of this has been so far, whether there's been any problem with the freedom of information as regards employment equity.

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**Ms Thomas-Osbourne:** Not that I'm aware of.

**Mr Webber:** Not that I'm aware of either.

**Ms Carter:** Just one final point: You mentioned that gays and lesbians would like to be among the designated groups and we did in fact have a presentation to this effect. The problem there seems to be that a lot of gays and lesbians are not ready at this point to self-identify so, even if they were included, it might not benefit them very much. I wonder if you have any opinions on this whole question of self-identification.

**Mr Mark Haas:** We discussed that at length. We're



not aware of the history as to how we developed four targeted groups. I'm assuming they were developed along the lines of being identifiable in the community and then we wrestled with the issue of gays and lesbians. What does a homosexual look like? Obviously, we don't know that answer. But then, when we looked at other things, such as aboriginals, what does an aboriginal look like? There are many people who are part of that targeted group who couldn't be identified as such. So we brought this group forward as probably another major group that's been discriminated against, although perhaps not on the basis of appearance. I look upon this, eventually, as maybe the targeted groups growing, maybe from four to any amount. I think in the end, the goal, the way I see it, would be that we wouldn't have any discrimination based upon any difference at all, whether they have to be identified in a formal way or whether they can be—

**Ms Carter:** Hopefully, that will be the effect of the legislation without having to bring in all the short and the tall and everybody else.

**Mr Haas:** Yes, that's right. We use that simply as an example. We discussed that if you asked someone who was a small person whether they were part of the four targeted groups as being disabled, I'm sure many people in that category would say, "No, I'm a small person, but I'm certainly not disabled." The similarity could be made for someone who's tall. We use them only as an example. Many people who are actively discriminated against are not part of the four targeted groups. So we added this fifth one with the hope of expanding that in the future.

**Ms Akande:** Thank you very much for your presentation. I noticed on page 3, where you mentioned training, "Training should also include" etc—certainly, we've recognized that the training for the employers is extremely important. However, one of the things that's also been mentioned frequently is the expense. I'm interested in your ideas around the focus of funds, whether in fact it should be in training and education or in the areas of implementation and monitoring.

**Mr Webber:** With regard to training, my idea as it jumps right out at me here is that employers have been given credit and concessions when they have been called upon to do specific things by law. This might be a method that could be employed to encourage employers to apply some of their profits, or what else, to ensure that this particular policy is well developed in their workplace. It's up to the Legislature, the government, the rule-making body of the province, to provide incentives along those lines. Employers, I am sure, will be very happy to have those benefits coming to them if necessary.

**Ms Akande:** So the incentives to comply with the legislation, then—let me not put words into your mouth—you would see as more important than the

government actually putting funds into training.

**Mr Webber:** I don't think it's necessary to differentiate in terms of quality or quantity or size, but let's say it's as important.

**Ms Akande:** As important.

**Mr Webber:** As important, yes.

**Mr Curling:** Let me just pick up from Mrs Akande, on page 3. I just want to move up on the first paragraph. You said, "Though we encourage lateral entry, every effort must be made to promote and use the skills that are available within the employer's present workforce." The question was asked to you about seniority and you said you hadn't looked at it in depth. I want to ask you just to comment, or if you can't, just when you leave here to look at that, because we find and I find that seniority flies in the face of the principles of employment equity. We have challenged that. For a moment, just for a thought, would you see that as conflicting with the principles of employment equity, that seniority is what comes first, before we look at other things in promotion?

**Mr Webber:** I would love to agree with what you're saying. I have been in the workforce for a while until recently and I grew accustomed to the idea that after a number of years of application to the particular employer I would be given some form of recompense. It's a comfortable situation for most of us: As we grow older, we just hope and expect to move on and to move on, regardless of whether we upgraded ourselves or otherwise. Granted, most of what we learn in universities and in workshops can be gleaned from the workplace on a day-to-day basis and experience, although not usually certificated and put on the wall somewhere, is of course a tremendous teacher.

We have a workforce today in which people are highly qualified. Young people are going through all kinds of training and it's not good enough to ask them to stand in line. It's not good enough. If they are going to be given the incentives to move on and to accomplish as best they could, they need to feel that they could achieve a little bit faster, rather than waiting in line.

I came from a situation as a young teacher in which you fell in line. The seniority list was built up. No matter how brilliant you happened to have been at the time, you joined the seniority list. Not only that, worse than that, you joined the seniority list alphabetically. You know, that made for a lot of *laissez-faire*, laid-back terms of attitude. "My turn will come, so what? And it better come when it comes, or else you're going to hear from me." That's not good enough and we hope we can do something with this bill that will ensure that the brilliant, hardworking ones are given an opportunity of skipping over.

**Mr Curling:** It's a very, very—

**Ms Akande:** Challenging?

**Mr Curling:** No. The fact is that you looked at it in a way that I think the labour movement and the unions should take a very serious look at what you just said, and that is true. Gone are the days that, because I've been around here a long time and nepotism was taking place way back when I got in, that I just sit there and expect it without even being trained. Training is another matter within the workplace that should have taken place. Therefore, I'm glad the way you look at it.

You seem to emphasize—

**The Chair:** Mr Curling, just as a reminder, Mr Callahan would like to ask a question after you've done, so remember that.

**Mr Curling:** Yes. You seem to emphasize somehow, correctly so, about employment equity in the workplace. There are a considerable number of things to be done about employment equity and access to the workplace. Without having access to the workplace, then employment equity in the workplace cannot be effective, because the point is, too, that people are shut out. Even with how qualified they are, they don't get in. You cannot deal with systemic discrimination unless you look within the workplace and without the workplace. Would you mind commenting on that?

**Mr Webber:** I have to give it some thought and I hope, if my fellow panellists here have thoughts that are right there in front of their minds, that they can jump in. How do you get them in?

**Mr Curling:** That's exactly it.

**Mr Webber:** I don't know if this is entirely relevant, but we looked at the police force in Hamilton, for example. Naturally, from the mayor's race relations point of view, we thought that perhaps sufficient evidence was not there to show that minorities were being moved along, women, blacks etc and whatever else. The question of placements from the outside into senior positions or to advanced positions, of course, met with a great deal of opposition, mainly because of the nature of the workforce I'm talking about. It's not easy to maintain morale and whatever else by bringing people from outside inside.

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I don't think that is entirely relevant to the question you have asked, but it's a question of inserting at certain levels people of stature and quality and qualifications, just to ensure that equities are being dealt with and that people are being put in a situation commensurate with their qualifications. Other than that, how do you enforce or how could you regulate getting people into a work situation? I'm not so sure I have the answers to that.

**Ms Thomas-Osbourne:** I'm not going to be very long, just short. Dealing with entry level, one of the ways we dealt with this in our mayor's race relations committee—we have a dinner every November to, I

guess, recognize businesses in the area that are participating in employment equity etc. One of our incentives is to give an award, plaques etc. Maybe something like that could be looked at. There are several ways we could be looking at it to get people into the workforce. There's not only one way.

**The Chair:** Mr Callahan, a short question?

**Mr Callahan:** It's going to have to be short. I look at two things—and it's going to have to be a statement. You can agree afterwards or disagree with me. First thing, I look at this as a lawyer and I think this tribunal is a field day for lawyers. If you think the Human Rights Commission was a lengthy delay and a backlog, you wait till you see what this is.

The second thing I would say is that I can't find anything in this legislation that penalizes an employee who maliciously or improperly alleges that there's been lack of employment equity. That gives me a bit of a chill, because it means that people could, for whatever reason—we're all human beings—decide to bring an application to the tribunal and allege something that's totally inappropriate, drag them through the proceedings. There's not one penalty in here, even in costs, that if that happened costs should be awarded. In fact, what you're doing is denying the opportunity to people who legitimately have a claim under that tribunal. I'd like to see that type of amendment put in there so that you don't have bogus claims. Let's face it, in a place of business, you can have people who will, for the strangest reasons, try to create a problem for their employer. Every one of those that's bogus, if there's not some sort of a thing, will detract from the jobs that will be available for people who even apply for them.

**The Chair:** Response?

**Ms Thomas-Osbourne:** Very shortly. I'm going to respond. I would disagree. I think the onus should be put on employers. That's the whole reason behind employment equity. It's because of the hiring practices of employers from eons, centuries ago. So in case you have the odd employee who comes—it's like everything else in every walk of life—then you deal with it when it comes to that time. But we are dealing now with employment equity. The onus has been on employers opening up so people can get into work, period.

**The Chair:** Thank you, Ms Osbourne. I want to thank all of you for coming from Hamilton to take part in these committee hearings.

**Ms Thomas-Osbourne:** Thank you very much.

**Mr Webber:** It's been our pleasure. Thank you.

**Mr Callahan:** I have a question of the parliamentary assistant. Is the parliamentary assistant here?

**The Chair:** Not at the very moment.

**Mr Callahan:** Maybe I can ask it of our researcher.

**The Chair:** Or the ministry staff.



**Mr Callahan:** Or the ministry staff.

**The Chair:** In the meantime, I'll call upon the Ontario Council of Sikhs as the next deputant. You have a question of the ministry staff?

**Mr Callahan:** Yes, because I think it's of some importance. I notice here—where are you?

**The Chair:** Who do we have? Would you like to come forward for a second?

**Mr Callahan:** It's a very quick question, but I think it's one that maybe I'm missing because I've just gotten on this committee. Subsections 34(1) and (2) give the tribunal "exclusive jurisdiction to hear and determine any proceeding before it and to determine all questions of law or fact that arise in a proceeding." If that's the case, what does the Human Rights Commission do from this point on?

**Mr Scott Bromm:** The Human Rights Commission would still retain its jurisdiction with respect to issues that come up under the Human Rights Code. What this provision does is give the Employment Equity Tribunal the exclusive jurisdiction to deal with any issues that arise under the specific sections of the Employment Equity Act.

**Mr Callahan:** At a business—employment and employees?

**Mr Bromm:** If an issue comes up with respect to the Employment Equity Act or an employment equity plan, generally they will go to the Employment Equity Tribunal. But if an individual has an issue under the Human Rights Code, the Human Rights Code provides far broader protection than the Employment Equity Act and provides protection to more groups than the employment equity bill does.

**Mr Callahan:** I appreciate that, but my reading of this says that a person who has a claim that they've been discriminated in the workplace will no longer be able to go to the Human Rights Commission. Is that right?

**Mr Bromm:** No, that's—I mean, it's partially correct. The amendment that you're referring to in the bill at the present time, in section 51, says that if an individual goes to the Human Rights Commission with a discriminatory complaint and it happens that that complaint arises from a practice that is addressed in an employment equity plan, then that complaint is referred to the Employment Equity Commission for review.

If the Employment Equity Commission in that review determines that the practice is addressed in the plan and addressed in a way that is in compliance with the Employment Equity Act, then that complaint will not proceed. But if the commission determines that the plan does not address the matter in a reasonable manner, then the matter is referred back to the Human Rights Commission because the Human Rights Commission retained its jurisdiction.

**Mr Callahan:** Holy moly.

**Mr Winner:** On a point of order, Mr Chair: Why are we delaying the public presentation to have a dialectic between one of the members of the Liberal opposition and administration?

**Mr Curling:** Come on.

**Mr Callahan:** It's important to us.

**Mr Winner:** But why now?

**Mr Callahan:** Because it's important to the people who are coming before us that they understand that this may become the bouncing rubber ball, as near as I can figure.

**The Chair:** Mr Callahan, I've allowed the question to be posed. I think he has answered your question. Do you want to continue with that?

**Mr Callahan:** Just one further thing, if I could. Why does the section—

**The Chair:** Mr Callahan, there is a deputant here. I would like to hear from that—

**Mr Callahan:** I appreciate that.

**Mr Curling:** On a point of order, Mr Chairman: I raised this question before to you about when we could deal with the government.

**The Chair:** Yes.

**Mr Curling:** You said to me that at times they are here and we can ask that question to the government members. My colleague is asking this question.

**The Chair:** Mr Curling, I've allowed that. We're in the process of it. What's your point of order?

**Mr Curling:** Let me finish my point.

**The Chair:** But what is your point of order?

**Mr Curling:** If you would allow me, I will—

**The Chair:** But come to it. We don't have all the time in the world. Come to it.

**Mr Curling:** This is it exactly. When we're asking the question, we seem to be rushed to say that we are impeding the presenter here when we want to clarify a point. It is extremely important that these things are clarified.

**The Chair:** All right.

**Mr Curling:** I feel that you've taken the position somehow—

**The Chair:** Mr Curling, it is not a point of order. That's why I asked you to get to the point of order. I have allowed the member to ask the question of the ministry staff. He's doing that and you're taking more time for unnecessary points of order. Mr Callahan, do you want to complete that question?

**Mr Callahan:** How can you say under section 34—this may be very important in terms of its being amended—the tribunal has exclusive jurisdiction if in fact the person is allowed to go to Human Rights

Commission first, and then if it's determined there that it's a matter for the Employment Equity Tribunal, they can bounce back to the Employment Equity Tribunal. I think you should look at it. I think it's creating two parallel bodies. We've already heard what it's going to cost—and the time of the individual, by the time they get the decision made, they'll be retired.

**Mr Bromm:** That's really two issues. The first issue with respect to the exclusive jurisdiction, most statutes which establish tribunals of this nature give that tribunal the exclusive jurisdiction to determine the matters before it. The Human Rights Code has it, the Labour Relations Act has it, the Pay Equity Act has it.

It doesn't say that they have exclusive jurisdiction to determine any matter that arises. It simply gives them the exclusive jurisdiction to determine the matters that are brought before the tribunal, and employment matters under the Human Rights Code will not go before the tribunal, so they do not have exclusive jurisdiction to determine those.

**Mr Callahan:** I hope you'll look at it because I think we're creating a monster.

**The Chair:** Fine, Mr Callahan. Thank you for the answer.

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#### ONTARIO COUNCIL OF SIKHS

**The Chair:** Mr Singh Bal, would you please come forward. We have 22 minutes for the presentation. Take as much time as you need for the presentation, leave as much time as you can for the questions and answers in the 22 minutes left. Please begin.

**Mr Manohar Singh Bal:** Thank you very much. Good morning, everybody, ladies and gentlemen.

We, the Ontario Council of Sikhs, are a community-based organization that has been working on various issues affecting the development of the Sikh community since our inception in 1987. Among other areas of interest is employment equity as well.

Over the last many years we have been working with many institutions and helping them in developing employment equity plans for the Sikh community. There are about 100,000 Sikhs in Ontario. A large number of them live in Metropolitan Toronto; however, there is a sizeable population in the other cities and towns across the province.

Although a large number of our population is well educated, the majority of them are stuck in low-paying, labour-oriented jobs. There are many reasons for it, but one reason which supersedes all is racism, the existence of systemic racism in our institutions both in the public and private sector.

Many qualified people and many professional people upon arrival in this country expect to find a job in their respective professions. Once they arrive here they find a lot different world. Nobody want to give them

employment in their respective fields. It is a fact of life that gold-medallist graduates work as general help and PhD individuals drive taxis in the province of Ontario.

They do this because they have no choice. Society has discriminated against them. They have been refused the opportunity to establish themselves in their respective professions, not because they are not educated or don't have adequate experience but because they look different. They, in some people's minds, are not mainstream. Some might say they don't fit well. Let me give you an example.

Many members of our community, along with other visible minorities, work as supply teachers in various school boards. Many of them have applied to become full-time teachers but they don't even get a call for an interview. I personally know of some people who have taken many additional qualification courses to upgrade themselves and have applied and reapplied for full-time positions without any success.

Some of them have expressed their feelings by saying that under the present biased and discriminatory system now in place at various school boards, they don't stand a chance. Let me say that many of these individuals have master's degrees, have many years of experience both in Ontario and outside Ontario and have upgraded their education by taking these additional qualification courses.

On the other hand, mostly white administrators of various schools boards hire fresh graduates from various universities as full-time teachers. These fresh graduates have no classroom experience. This is an example of plain and simple racism which exists in our society with respect to hiring teachers and the educational system.

Let me give you another example about the civil service. It is the feeling of the community that unless you know somebody inside you don't stand a chance. This is especially true for middle and higher management and even at the entry level. It is a general feeling in the community that once you attain a certain level all doors for promotion are closed, and after that you either are removed or demoted.

There is an urgent need to address the issue of employment equity. If we believe and preach equality to others, let us practise it here in our home, in the province of Ontario.

It is a fact that over the last many years visible minorities, along with aboriginals, women and people with disabilities, have been systematically discriminated against. They were not given jobs and opportunities to establish themselves as full and complete citizens of this province. They were purposely and intentionally kept at the bottom of society. If ever they had been given a chance, even at the lower entry level positions, they would have contributed to the development of the society.



Now is the time to address this past mistake. Let us correct this historic injustice first by admitting it and then by doing something to rectify the situation.

We recommend that either through this legislation or via a regulation a specific enforceable plan with targets and timetables be developed to address these past historic discriminatory injustices and, through this plan, four designated groups be made full and complete partners in both public and private sectors at all levels.

I would like to address one myth which is being spread around about employment equity, that is, that somehow employment equity will lower standards and therefore the principle of merit will be compromised. This false myth is purposely being spread by those who in the past did not apply the same principle of merit themselves or by some organizations and institutions with deep-seated racism. Had they been fair and equitable in the past, there would not have been a need to introduce this employment equity legislation.

The fact was and still is that well-educated and well-experienced members of visible minorities, along with other disadvantaged groups, were not and still are not being hired. They are being discriminated. We as a society must act to stop this blatant discrimination.

Stephen Lewis, who served as adviser on race relations to the Honourable Bob Rae, Premier of Ontario, after riots on Yonge Street, says this about employment equity in his final report of June 1992:

"This is a quite straightforward section of my report. There was not a single meeting that I can remember where employment equity did not arise. To my surprise...employment equity is a kind of cause célèbre for visible minorities everywhere. They see it as the consummate affirmation of opportunity and access.

"Somewhat anxiously, therefore, I have to tell you that there is a great concern about the progress of the government's intended employment equity legislation. It can't be introduced soon enough.

"And there may be no other explicit legislative initiative which will mean so much to establishing a positive climate of race relations in the minds of every single minority grouping: black, South Asian, East Asian, Chinese—it matters not, public and private sector alike."

Mr Lewis further suggests some specific and special initiatives in the Ontario public service so that the OPS can serve as a role model of employment equity for other employers. In the end, he suggests that employment equity legislation be introduced in the Legislature and be passed.

My objective to quote Stephen Lewis's report was to state the following: employment equity was supported by all those who were consulted by Mr Lewis during his deliberations; employment equity which will bring equality and fairness is essential for a positive race

relations climate in the province of Ontario.

Over the last many years we have witnessed education campaigns and various affirmative action programs of different levels in government and other institutions to increase the representation of disadvantaged groups in the workforce. It simply did not work and, quite frankly, has been a major failure. Therefore, it is imperative that government show leadership and take a bold step to bring equality and fairness at the workplace both in the public and private sector.

In our opinion, Bill 79 does that. It brings fairness and social justice for all people. We support this bill and we would like it to be implemented as early as possible. We will endeavour to educate the society. We are confident that as a result of the implementation of this bill we will become a just society.

Sikhs also face religious discrimination while searching for employment with respect to wearing of the emblems of Sikhism, that is, the 5Ks. One of the requirements of the Sikhs is to wear the 5Ks which are listed on page 6. The overall importance of the wearing of these five emblems is clearly stated by the 10th prophet of the Sikh faith. He says:

"Know these 5Ks to be the emblems of Sikhism,

"Under no condition can one be exempt from these,

"Kirpan and bracelet, drawer and comb—these four

"Without hair, the fifth emblem, are all meaningless."

From time to time various employers, public service agencies and other organizations have discriminated against Sikhs and did not allow them to wear the 5Ks while they were at work, hence did not allow them to practise their religion. All the time members of the Sikh community brought these matters to the attention of the Ontario Human Rights Commission and other authorities, and all the time were granted the right to wear the 5Ks.

Some time ago the Peel Board of Education fired two teachers who were wearing the 5Ks. Eventually, the Peel Board of Education lost the case at the Ontario Human Rights Commission and was forced to change its policy about the wearing of the 5Ks. Similarly, some examples of harassment and occasional firing of those employees who wear the 5Ks have been brought to our attention.

It is a widely held feeling among this community that it is very, very hard to find a reasonable and compatible job with turban and beard. Therefore, while we enshrine and promote equity and the accessibility principle in society and through Bill 79 trying to seek equality for those who have been historically discriminated, it is important that religious discrimination be also addressed and steps be taken to eliminate it.

Various laws and policies of the government of Ontario need to be changed to accommodate the wearing of the 5Ks. Therefore, we recommend that this

committee in its final report recommend that various legislations and policies of the government of Ontario be amended whereby Sikhs are allowed to wear the 5Ks at the workplace.

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**The Chair:** Thank you, sir. Five minutes per caucus: Mr Winner, and then Mr Fletcher.

**Mr Winner:** Thank you for your presentation. You make a point very convincingly, which was also made persuasively earlier this morning by the spokesperson on behalf of the Iranian community association, that what we have in the employment equity legislation is actually an affirmation and declaration that merit will be the all-important principle in the workplace, and that regardless of the colour or tone of your skin and your gender and your physical disability, you should be hired and promoted and retained based on your qualifications and skills. That seems to be a lesson that's lost on the opposition members, particularly the Conservative members, who keep harping on the fact that this bill will somehow compromise merit through employment equity. I wonder if you could comment further on that.

**Mr Singh Bal:** As I said in my presentation, the principle of merit is no problem to us as a community and I think to other communities which have been suffering over the last many years because of the hiring practices of big businesses and big machines out there. I gave you one example of teachers, but the same could be said about many other professions and trades. Even if there is a need and it is somehow felt that the principle of merit be included either in the legislation or in the regulation in some shape or form, I don't think we will have any problem. What I'm saying is that let's first go out there and apply this principle of merit and then see who comes at the top, and then we will see if there are any flaws in it.

**Mr Winner:** I was also interested in knowing how the 5Ks would fit into this legislation. Was it your intention that other legislation, such as the Human Rights Code, be clarified, or were you somehow thinking that this legislation would contemplate dress codes?

**Mr Singh Bal:** This legislation per se I don't think should have a clause to accommodate the 5Ks because some issues related to the 5Ks—for example, from the police perspective, wearing the helmet instead of the turban has to be addressed through separate legislation in which we get exemption from the Highway Traffic Act; with respect to wearing a helmet versus a turban at the job site, there's need to make some amendment to the Occupational Health and Safety Act. We are working with various ministries on all these matters to be addressed. In this legislation, if in your report you recommend that concept, that religious emblems be accommodated at various levels and endorse that principle, then I think that will be a boost to us to go on

working with other ministries, which we are doing, and also kind of lobby the government by saying, "Start doing something more on it."

**The Chair:** Mr Fletcher, one final question.

**Mr Fletcher:** Thank you for your presentation. You've given some fine examples of how things have happened; people not getting a call back. With Bill 79, as we progress through the bill and we take a step, each step we take is to knock down barriers. Is it your experience that the barriers are not so much with getting the job but that it's getting the interview for the job or getting into the door to even get an interview? Is that where it starts? Is that the first line of discrimination, of racism? You talk about the teacher who doesn't get a call back even though they've applied. After filling out the application form, is that where it starts, at the interview stage, where people are not getting in the door for an interview?

**Mr Singh Bal:** I think it depends on what aspect you want to look at. If you want to look at it from the point of view of those people who are not even in the system, then it starts at the entry level. But those people who are at some level within the system have problems with promotions and proper opportunities for training and development.

**Mr Fletcher:** Do you see Bill 79 helping people get the promotions, get the interviews, to start removing the barriers?

**Mr Singh Bal:** My hope is that Bill 79, and also the regulations, which are still at the developing stages, will help people at all levels, because we want to see representation not only at entry level and not only at higher management level but throughout the system. Many of the problems which we as a society feel with respect to social integration are there because there are not enough people of various cultures and linguistic backgrounds at all levels of, for example, public service and in other institutions of society by which they can understand their clientele and deliver the best service. So I see it at all levels, although not everything happening in one shot, but if we have a timetable and if we have a work plan in front of us, then in  $x$  number of years we will get there.

**The Chair:** Thank you. Mr Curling, then Mr Callahan.

**Mr Curling:** Mr Singh Bal, a very effective presentation. I just want to pick up on what Mr Winner said; I'm glad he has come to the realization that merit is a very extremely important part of employment equity. The fact is that it has been stated over and over by groups like yourself: "Please do not patronize us. We are equipped, we are capable and we want to participate. We are not here on rhetoric or poetic lines. What we are here to do is to write legislation, to put in place things like merit is the principle we base it on and that



we should not be discriminated against, because we do have the capability."

As a matter of fact, I'll go right to that and ask you a question. You quoted Stephen Lewis, a man I respect, who has done a very good job at stating the things that have been said all along, but he said things so well at times. He stated here, talking about employment equity, that the visible minority community, everywhere he went, sees it as "the consummate affirmation of opportunity and access." Having said that, we have to write legislation that makes that happen. In other words, if we write weak legislation, I think we'll be worse off than in having no legislation.

Do you see that this legislation, Bill 79, needs a lot of improvement to be effective and to bring about the type of access in promotion and hiring that your community wants?

**Ms Margaret H. Harrington (Niagara Falls):** Where are your amendments, Alvin?

**Mr Tilson:** They're coming, Margaret.

**Ms Harrington:** Bring them forward, Alvin.

**The Chair:** Please continue.

**Mr Singh Bal:** First, let me say about the merit principle that unless otherwise stated, when it comes to hiring, whether private or public sector, a small or big company, the merit principle is always there. Who doesn't want to hire the best candidate out there?

**Mr Curling:** We wondered too.

**Mr Singh Bal:** As to the second part of your question, nothing is perfect in this world. As I quoted earlier, a number of years ago we had these memos going into various offices, that "The face of Ontario is changing, so let's give opportunity to those who are coming new to the country," and, as I said in here, it failed. It did not move the decision-makers to change their policies and attitudes.

Then came affirmative action; again, nice principles written on the wall, but it didn't mean anything because they were not being implemented into the workplace. But at least we went a step forward. Rather than just saying word of mouth, let's put affirmative action in a policy statement. In the same way, there are a number of race relations policies available out there at various school boards, various companies, but they have categorically refused to even implement the very first principle which they wrote themselves. But at least that policy is there. Before there was no policy, so maybe that policy did some accountability.

From a public education campaign we came to affirmative action with a bit more teeth. With this legislation I think we are going to step 3. How far we will succeed and how far we will fail—I mean, we can use our senses, but history will tell. But from our perspective and from other people's perspective, at least it is a move in the right direction. We are going from

step 1 to 2, from step 2 to 3. From our point of view, we are hoping that this legislation and the regulations, when they are developed, will be developed and implemented in such a way that we will see change, as I said, at not only one particular level but all: the lower level, the middle level and the higher administration level.

1200

**The Chair:** Mr Callahan, one minuscule question.

**Mr Callahan:** Just very quickly, following up on it, the thing we've been hearing from some presenters to this committee is that the seniority aspect will prevail. It doesn't matter what type of credentials you have, certainly in a unionized shop; you won't move up beyond the next level until you've gained the seniority to do that. Clearly, that's not meeting the needs of what you've addressed in terms of fairness and being able to have entry and promotion up the ladder on the basis of merit, yet that's what we've been hearing from union presenters before us, and that's what this bill does in fact: It preserves seniority as a sacrosanct obstacle beyond which you cannot go.

**The Chair:** Okay, thank you. Your answer.

**Mr Fletcher:** On a point of order, Mr Chair: What Mr Callahan just said about this bill holding seniority sacrosanct is not true.

**Mr Callahan:** It is.

**Mr Fletcher:** It even says in the act and in the regulations that seniority—

**The Chair:** I think you've made your point. It's not a point of order, but we understand what is being said. Please, your answer to that question.

**Mr Singh Bal:** In a way I agree with you, and in a way I don't agree with you, because we—and when I say "we," I mean the visible minorities—have been out of the system for  $x$  number of years, and there hasn't been any opportunity for them even to go in at an entry level, never mind taking seniority and going to higher management. Even if we start today and, for example, say with the help of this legislation we get in, then in  $x$  number of years we will pass that test of seniority and go up there. But if we don't even get in, which is happening right now, never mind the seniority and never mind anything else. The unions themselves and anybody else who preaches this don't practise that. Even if you look at the unions, how many of the unions have members of a visible minority within their own staff and within their own executive and within their own committees and so on and so forth?

With respect to ministries, with respect to government, with respect to political parties, with respect to unions and so on and so forth, what we have to do is practise what we preach. Written on a piece of paper doesn't mean a thing if we're not willing to do anything. Even if we do less or little, whatever we say, that's implemented, then within  $x$  number of years we

will get somewhere; we will be better off five years down the road, what we have then, than five years before. In my mind, that will be progress.

**Mr Tilson:** Sir, your organization has spoken before about several of the issues you have raised in this paper: discrimination not only with culture but with religion, with colour of skin, with nationality. Those arguments have been made before. You're obviously saying that the Human Rights Commission has been ineffective, that it hasn't solved or adequately dealt with many of your concerns, whether it be in the workplace or anywhere else.

We're now going to have another layer of bureaucracy, another new bureaucracy which is going to cost the taxpayer of this province very dearly. My question to you is, do you feel that the Employment Equity Commission is going to do any better a job than the Human Rights Commission, as opposed to amending whatever the act is that creates the Human Rights Commission; as opposed to amending that legislation and giving it more teeth, giving it more tools to adequately deal with the discrimination you speak of?

**Mr Singh Bal:** I'm not expert in how the laws are set up; I'm a layman of the community. But let me give you an example of the Human Rights Commission and Human Rights Code. In some respects it has been ineffective, but in some respects it has been effective. I'll give you an example. Whenever discrimination happens, for example, to me because of my turban, I can go to the Human Rights Commission over and over again. The commission will decide about that particular case but it will not result in any policy or legislative change. That is why in our community there have been a number of cases on the same matter, on the same issue over and over again.

We have been working with the previous government and then with this government, and also made a submission to the task force on the Human Rights Code review that makes it some kind of a system that if, due to one particular reason, discrimination happens and the second time it happens again due to the same reasons and under the same circumstances, there be a policy that under these kinds of circumstances this cannot happen a third time. So in that respect, the Human Rights Commission and the Human Rights Code have been ineffective, because they has not been able to enforce their own decisions in some other cases.

**Mr Tilson:** I think my line of questioning—Mrs Witmer has a question, but very briefly, I guess I'm concerned with creating another bureaucracy.

**Mr Singh Bal:** No, I'm coming to that.

**Mr Tilson:** Why can't we improve the existing system that we have as opposed to creating yet another system?

**Mr Singh Bal:** I think that's why we have politi-

cians, and they decide what they want to do and then tell us, the public. What I'm saying is that with the employment equity legislation now, and as I said earlier, how effective it will be, how effective it will not be, maybe five years, ten years down the road we'll find it out. But we are the public and we are the group that is being affected. Whether that would be done through the Human Rights Code or whether that would be done through employment equity legislation or any total legislation which combines both of them will be fine with us. But I guess the politicians have all the resources and money and expertise on their side to see how best to serve the communities.

**The Chair:** Ms Witmer, one final question.

**Mrs Witmer:** Thank you very much. I'm pleased that Mr Winninger has acknowledged that merit is an important principle, and now all three parties agree and there should be no problem. I'd just like to follow up. You've indicated here, and I think you've made an excellent presentation and I would certainly agree with you, that the discrimination you face is real. I know there is religious discrimination and I hope we can address that issue.

You talk about discrimination within the educational system. I guess I would like to say to you that I don't believe this bill is going to see much of a change and I'll tell you why. If you take a look at the paper today it indicates that because of the social contract negotiations and the ramifications, teachers in Ontario who quit, die or retire will not be replaced in the next three years. So there really are not going to be any entry-level jobs into teaching, and I would suspect throughout the public sector.

Do you see any way of dealing with that particular problem, because it's still not going to give the designated groups an entry into those positions even if this legislation were passed, because the positions just aren't there.

**Mr Singh Bal:** I don't know what I can do about that, but what I can say is that under the financial problems which we do have in this province, everybody has to pay their share and take responsibility for it. But even if we have here this legislation or any other legislation which somehow addresses those problems which we had earlier with respect to the hiring of the visible minorities and other groups, and even if nobody's going to be hired, say, in one year or two years, there will be some hiring in the third year and the fourth year and the year after that.

When we were in the boom, we thought we were going to be in the boom for ever, but that's not what life is. If the tariff goes up, it's bound to come down, and now the tariff is down and it is going to go up. It might take one year or six months or two years, but once that tariff goes up, even if by that time we have the system in place in which everybody is treated fairly



and equally, I will say we have made some progress.

**Mrs Witmer:** Okay, Mr Singh Bal, thank you.

**The Chair:** Thank you very much for coming today and taking the time to participate in these hearings.

This committee will adjourn to 1:30 pm.

*The committee recessed from 1209 to 1333.*

#### LOCAL ORGANIZING COALITION ON WOMEN'S ISSUES IN TRAINING

**The Chair:** I'd like to call the meeting to order. I would invite the Local Organizing Coalition on Women's Issues in Training to come and present their deputation. Good afternoon. You have half an hour for the presentation. You may want to read it or not read it and allow plenty of time in that half-hour for questions from the three different caucuses.

**Ms Jo-Ann Shreve:** I thank you for the opportunity of being able to address this body. The Local Organizing Coalition on Women's Issues in Training was established in 1992 directly in response to the announcement of the Ontario Training and Adjustment Board. The purpose of the organization is to respond to women's issues in training and employment. We're currently in contact with over 400 women in organizations which represent women in the Windsor-St Clair region.

Mandatory employment equity legislation is not only welcomed in Ontario but is absolutely needed. Employment equity is not an arcane quota system. It is a system instead of management development within a company and a workplace that will help to bring out any potential in the workplace without ignoring the abilities of the workers and their future hope. It is unfortunate that even today, inequality is embedded in our present-day reality.

It is a reality also that corrective measures are needed to remove the systemic discriminatory policies and practices that have served as barriers to the targeted groups. It is also a reality that people need encouragement to act in the best interests of others. It seems hard to believe that at this juncture in our society that prides itself on fairness and on a sense of equality, there are those who would promote the abandonment of this legislation or the dilution of it.

In 1991, the Women's Incentive Centre of Windsor, Ontario, made a presentation before the commissioner on employment equity and proposed three manifestations of opposition to employment equity:

(1) "Should structural changes to the employment policy be advanced in a time when we are in great recession?"

(2) "The targeted groups are already making advancements. Do we need any more to be successful?"

(3) "Corporate managers need more time to do the job." It is now 1993. Unintended I'm sure, but surely a

prophetic utterance.

Let me make a quote from the Windsor Star, August 1993, "Ottawa Only Pays Lipservice to Women's Issues," in which the writer, who is a woman and a recent grad from a trades and skills program, is unable to obtain work in the field as do her male peers. "I have been rejected by the best." This woman apparently sent out over 600 applications to various employers across Canada. "This became all the more frustrating when I discovered that some of the men in the same course who did not do as well as myself, including one in particular who didn't receive his certificate upon completion, had been working for some months." There's no need for us to go into the stats; I'm sure you're familiar with all of them. The difference between 1991 and 1993 is minimal. There is one bit of stats that I'm sure, however, has changed to the further disadvantage of women, in particular in the Windsor area.

The 1989 Women in the Workforce task force report was done, at which point it was reported that the women in Windsor had a higher rate of employment in either full- or part-time work than women in the rest of Canada. However, since 1989, untold numbers of companies have closed out and shut their doors or moved out of Windsor. We need employment equity legislation, and we need it just as expeditiously as the government can proclaim that law.

There are four thoughts that I would like to leave with you with respect to delaying the legislation:

(1) Will those in opposition to the bill further slide behind and become more entrenched in their opposition if the bill is delayed any further?

(2) What of the quality of the existing workforce? Will the postponement and delays further impact them negatively, since then there would be an appearance of a fractioning in the proponents of the bill?

(3) Would this lead to the passing of a watered-down version of the bill, something that's not even worth the paper that it's written on?

(4) What incentives would there be for employers to practise equity, or would we be subject to "whosoever will"?

I do leave with you six suggestions on behalf of the Local Organizing Coalition on Women's Issues in Training:

(1) Education of the general public as well as the labour force partners is absolutely needed to deal with the myths, misconceptions and false perceptions that exist surrounding equity.

(2) Resources must be made available to labour market partners to assist them in moving successfully into equity. Joint initiatives could be undertaken.

(3) Employment equity is a process. Legislation will help that process along, and we need to reach the unconverted.

(4) All companies should set goals and timetables to see what the measure of their success is. There must be built into the legislation some means of establishing reasonable progress to reach standards set.

(5) It will be important to see that built into the legislation are measures that ensure proper monitoring and compliance to the intent of the law.

(6) It would be important that the legal decision-making be consolidated through tribunals to give guidance to and acceptance of the law.

1340

Most major employers either have employment equity contracts or plans in place. Unions pride themselves on solid, enforceable contract language in the workplace. Government places great emphasis on the need for change in a changing world. There is no greater need than the one facing us now: to provide for, facilitate and encourage the press towards equality without delay for all our citizenry.

On a personal note, my family has been in this country for over seven generations on both sides. We have children who have a rich heritage in this land which has not always provided the opportunity to their forefathers that it should have. Our struggle has been a long one. It is my hope that the generation to follow will no longer be subject to the inequities of the past, and I know that I voice the hopes of millions of native-born Canadians and transplanted Canadian residents when I express this hope.

**The Chair:** We'll begin with the official opposition; six minutes per caucus.

**Mr Curling:** I want to thank you for your presentation, Ms Shreve. You got right to the point, and I think especially four of the concerns that you raise here are extremely important. I just want you to assist me in some of them, in explaining a bit more.

In number 2 you said, "What of the quality of the existing workforce?" We are confident you are saying that even those not in the workforce, those outside the workforce—there are qualified people outside our workforce who are able to come into the workforce, so access is important. And within the workforce, even when they are there, we speak of the designated groups, their mobility, movements, and that their education and training is not sufficient for them to compete. That is what I presume—the systemic discrimination so often seen in those places should be eliminated.

The part I want to emphasize: "Will the postponement and delays further impact them negatively?" I don't think right now that either the government or the opposition have any intention at all to delay the legislation. The intent here is to have good legislation that is worth the paper, as you said, it is written on. I have concerns that the legislation is vague and needs to be more targeted and specific. Do you have those kinds of

concerns too? Because it's important what your concerns are so we can get that into the bill.

**Ms Shreve:** Yes. In talking with my colleagues, those who have had an opportunity—you have to realize I have not had quite yet two weeks to read over all of the information pertinent to this particular situation, but in reading over as much of the legislation as I have read, I was concerned with what I consider to be vagueness in the legislation. I don't think there are areas where it is direct enough, especially when we're talking about monitoring of employers: who's going to, once an employer says he's set standards, determine that he has actually reached the standards that he says he's set.

**Mr Curling:** Because you spoke so eloquently and so directly, I'm going to ask you a direct question. It's something that concerns me all along. As we know, pay equity and affirmative action, when that came about, especially for pay equity, to say it is to address equal pay for work of equal value, it ended up being gender-specific, to be women. As a black woman, and you mentioned that in here, are you concerned too that even the issues of women being addressed in here, do you think that black women, or women—I don't want to just say black women, but any other women outside the other mainstream women—will be compromised in any way by not getting their leg up or foot in the workplace, or whatever the case might be, by legislation?

What I'm trying to hint is that I was disappointed about pay equity because it became so gender-specific that it lost really its focus and I'm just wondering if employment equity is leaning towards that in any way.

**Ms Shreve:** That is my hope, that it doesn't lose its focus. I realize that we all come from a different focus when it comes to what we anticipate legislation doing for us and my concern is that, whether we be women, visible minorities, aboriginal people or disabled people, legislation will become so non-specific that it will not do us any good at all.

**Mr Curling:** Groups have come before us and spoken about grouping in different areas. They say that groups should be further identified, which they are calling subgroups. Are you familiar at all with that expression, that people should be grouped? The fact is that sometimes there's a visible minority—even the aboriginal people, in the regulation, have shown where it has broken down, what do they mean by that.

Do you feel in a visible minority that is to be a subgroup dealing with that—do you see any problem in doing that aspect of it?

**Ms Shreve:** In a subgroup to what or who?

**Mr Curling:** Well, for instance, I would say—that's exactly it, and how many subgroups. People speak—if they are Asians, what Asians?

**Ms Shreve:** A visible minority is a visible minority. You can look at me and you can tell I'm a visible



minority. You can look at other people in this room and you can tell that they're a visible minority. There are some people that you can look at in this room and you will not know they are disabled in any way, shape or form, but that does not change the fact that they are. So the difference between breaking it down to that kind of category seems to me innocuous.

**The Chair:** Last question.

**Mr Curling:** Last question, the Chairman is telling me. The question I've been wrestling with and have been asking people—and they've given me some wonderful explanations—is about seniority in the workplace. The unions have negotiated with the government to maintain seniority in the workplace as sacred and not to be touched. Do you think seniority rights conflict with employment equity principles?

**Ms Shreve:** I do not think seniority rights have to conflict with equity principles. What I think the union has to do and what government has to do is to sit down and figure out how we work this out to the best benefit of all that are involved.

**Mr Tilson:** You've mentioned your own ancestry and I think we're all proud of our own ancestry. I can go back a number of generations in my particular—both sides of my family and they happen to be Irish. There's no question in the early years there was discrimination against the Irish, for whatever reason, and we've seen—

**Mr Callahan:** I think it was something about your former life.

**Mr Tilson:** Mr Callahan, of course, jumps in at this point—but we also look at discrimination with respect to certain religions. It wasn't so long ago that if you were a Catholic, there was great discrimination with respect to Catholics and Jews.

My question has to do with something outside of the visible minority or the other groups, because it's a concern I've had with respect to discrimination against people with accents, no matter what the colour of your skin, your gender. From my observations, from people who have spoken to me at least, there is a certain discrimination against people whose mother tongue may not be English, it may be something other than—or it may be English, maybe Mr Mills, for example, but—

**Mr Mills:** I've been discriminated against.

**Mr Tilson:** Yes, indeed, Mr Mills says that—but it's a concern that's been drawn to my attention. My question to you is whether you think that allegation of discrimination with respect to language is that serious?

**Ms Shreve:** I don't speak with an accent unless I choose to and I speak with several different accents. I don't have a problem with people discriminating against me on the basis of my accent.

When we look at discrimination and the history of discrimination in our country, it has been and is the history of this country that we discriminate most

definitely on the basis of race and colour. Accents can be gotten rid of. We can train ourselves to speak without an accent, in which case we can eliminate the barrier if that were to be a barrier against us.

Can I do anything about the colour of my skin? Don't want to do anything about the colour of my skin. Can I do anything about my race? Don't want to do anything about my race and I should not have to.

1350

**Mr Tilson:** Are there other groups outside the four groups that are mentioned? I don't know whether you've been following these proceedings, but are there other groups, whether francophones, gay groups, individual nationalities or religious groups that these four groups, you feel, should be expanded into?

**Ms Shreve:** My concern is for the groups that have been most disparagingly treated unfairly through generations, and that happens to be the visible minorities, aboriginals, people with disabilities and women.

**Mr Tilson:** So you're satisfied that those four are adequate and it need not expand beyond that?

**Ms Shreve:** I look at what happened to the Ontario Human Rights Commission when it started expanding and expanding to include everybody. You can't cover everybody adequately. What we need to ensure is that the groups that are most needing protection are the ones that are taken care of first.

**Mr Tilson:** That leads to a further question. There was an article in the Fraser Forum in July which said that by the year 2000, 85% of new job entrants would belong to at least one of the four targeted groups: aboriginal peoples, the disabled, visible minorities and women. Then it went on to say that when 85% of job candidates fall into categories which are eligible for preferred treatment, the benefits to individual members of the preferred categories will necessarily be small, since 85% of their potential competitors will be receiving similar considerations. In other words, this type of categorization into these four groups could itself lead to discrimination among the various subgroups.

**Ms Shreve:** Are you asking me to respond?

**Mr Tilson:** I'm just asking you for a comment as to whether you're concerned by that allegation or whether you feel the Fraser Forum is full of bunk.

**Ms Shreve:** I think it's a red herring.

**Mr Tilson:** Okay. I do appreciate some of your thoughts. I think of the first two points, recommendations that you were talking about, specifically with the issue of education. This government, of course, seems to have chosen to require the private sector to assume responsibility for employment equity, rather than addressing the educational issues that are primarily, I believe, the province's responsibility.

The other issue is, it's fine to mandate things, but how do we encourage private enterprise, in particular,

to undertake, whether it be training or all the bureaucracy that goes with it—at least, that's what I think you were saying, and you could perhaps correct me. In the public discussions that went on prior to Bill 79, many participants in those discussions recommended the use of financial incentives and grants and the provision of low-cost technical resources to employers to ease the financial burden of compliance. Those recommendations appear to have been ignored. Is that what you meant with your second recommendation?

**Ms Shreve:** Those are some of the things I was speaking of and I do believe government and industry need to go hand in hand in this whole area of education to get the resources.

**Mr Tilson:** Thank you for your presentation.

**The Chair:** Mr Fletcher and then Ms Carter.

**Ms Carter:** Thank you very much—

**The Chair:** First Mr Fletcher.

**Ms Carter:** Oh, sorry.

**Mr Fletcher:** After listening to some of the other comments and the process that's been happening in Ontario when there was discrimination against certain groups, there was legislation and there was something enacted—the Human Rights Commission—to try to get rid of some of the discrimination that was going on in society; pay equity, affirmative action passed by Liberal and Conservative governments, I must admit. I think we all share the same concern when it comes to employment equity. It's how we get there.

I think Bill 79 is a step in that direction. I think, along with all the other equity legislation that has been passed by ourselves and previous governments, that we're moving in the right direction. I don't know if we're moving fast enough; I don't know if we're strong enough, but I do believe we are moving in the right direction and I hope we do continue to move.

In your presentation on page 2, "Employment equity is not some arcane quota system,"—I'm quoting you—"it is instead a system of management development within a company or workplace." Can you expand on that for me, please?

**Ms Shreve:** You know, there are a lot of people who have a whole concern about quotas and establishing quotas. What I believe employment equity does for us is to allow for those in our community who have been impacted most with discrimination to receive a fair and equal opportunity to get in the door. Once having entered the door, then there is the opportunity to move in all directions within that company.

What has happened in the past, as you get your foot in the door and you stay at that level, whatever it is for the next 15 years, discrimination still works against you based on someone's perception of what you are or are not able to do, given your race, colour, your ability or disability etc.

**Mr Fletcher:** Just another point. We on the government side are not fighting with the opposition over this. We all agree there should be employment equity. Again, I'm just saying how we get there.

I'm looking on your page 5, where you say, "Education of the general public as well as the labour force partners"—again I'm quoting you—"is absolutely needed to deal with the myths, misconceptions...." Is that through the legislation or is it working with our partners, the labour movements, business consortium and people to promote the education that way and also the commission's role as being an educator is part of it? How else do we move on the education?

**Ms Shreve:** Those are areas that I'm speaking of in particular. The commission, I believe, because it has the expertise in the area of employment equity, would lend itself to assisting employers into moving into equity at all levels of the employment process.

**Ms Carter:** Thank you, Mrs Shreve, for your very emphatic support for this bill. I assure you, we're not contemplating delay; we want to get on with this as fast as we can.

You said that your organization originated in connection with OTAB which, of course, is an initiative the government is taking in the area of training. Also there's an access to professions and trades initiative to fund demonstration projects, so we are working in that field. Do you think these initiatives that we've brought forward meet the needs of the people in the designated groups in terms of labour market fairness?

**Ms Shreve:** I can only hope it would do that. Again, that's why we're making this presentation, because we realize the difference between what actually exists now in our society and what we hope the legislation will bring about and will actually take place.

**Ms Carter:** That's the other component. We're looking at equity in hiring in this bill but, although the training is to some extent separate, that has to be part of the piece as well—

**Ms Shreve:** Yes, it does.

**Ms Carter:** —and I wondered what you felt about the adequacy of what's being done in that field.

**The Chair:** Mrs Harrington, one last question.

**Ms Harrington:** Thank you very much for coming. We had hoped to be going to Windsor but we couldn't because of the opposition. It's always amazing, I find, the number of red herrings that come up during these discussions, but it's great that we actually examine them and you see them for what they are: irrelevant. The people watching can actually look at them as well.

I wanted to point out also the three things you mentioned that I hear in my own community that are justifications which are totally irrelevant: that the recession is on now, we can't do it; that we have already had success for women; and also that we need



more time. You can always use those things and they mean nothing.

My question is, you mentioned here: "Resources must be made available to the labour market partners to assist them in moving successfully into equity; joint initiatives could be undertaken." I don't understand what you mean by the word "resources" and to "labour market partners." Can you explain that?

**Ms Shreve:** Okay. Resources: meaning whatever the commission would be able to offer to assist employers, whether it be its own people coming into a company and showing them how to go about establishing policies, showing them how to set targets and goals for this type of movement within a company, showing them how to move people out of where they are and bridging between where people want to be, where they are and where they would like to be. Labour market partners are going in with your unions, because you have such as thing as the strata within the union, seniority and showing and working along with union, management and the government to determine how we can keep our seniority intact and at the same time move towards equity.

**Ms Harrington:** So it's an educational process and we then are responsible for making sure that the resources are there?

**Ms Shreve:** Yes.

**Ms Harrington:** Thank you.

**The Chair:** Ms Shreve, we ran out of time. I want to thank you for coming here today to share not only your experiences but your ideas.

**Ms Shreve:** Thank you.

1400

#### GROCERY PRODUCTS MANUFACTURERS OF CANADA

**The Chair:** I'd like to call upon the Grocery Products Manufacturers of Canada to present. Mr Frakes, you have half an hour for your presentation. You've seen how the previous delegate has dealt with the time. If you want time for the caucuses to ask questions, please leave plenty of time at the end for that.

**Mr Bill Frakes:** We shall.

**The Chair:** Would you introduce your colleagues.

**Mr Frakes:** I shall. Sitting directly to my right is Helen Wakely, and to my far right is Murray O'Brien.

Good afternoon. My name is Bill Frakes. I am vice-president of human resources for Unilever Canada. As I've just indicated, sitting next to me are Helen Wakely, the manager of human resources with Colonial Cookies, and Murray O'Brien, who is the manager of human resources for J.M. Schneider Inc. We are here representing the Grocery Products Manufacturers of Canada.

The Grocery Products Manufacturers of Canada, known as the GPMC, is a national organization of 175

companies that are engaged in the manufacturing and marketing of brand consumer packaged goods generally sold to retail and foodservice outlets. In Ontario, our members total more than 90,000 people within their workforce.

In the brief presentation that will follow, Murray O'Brien will first comment on the principles of employment equity that are endorsed and supported by GPMC, I will then speak as to the process that has occurred to date and, along with Helen Wakely, will speak about some key issues that remain within the legislation as we view it.

**Mr Murray O'Brien:** As Bill indicated, I'd like to comment on GPMC's guiding principles for employment equity that were developed more than two years ago. First, let me underscore that GPMC members recognize the competitive necessity of ensuring that there is equity in employment. Grocery manufacturers in particular understand the importance of a representational workforce on a company's ability to market a diverse consumer population. Additionally, members are aware that a company's ability to attract and retain qualified personnel will have a significant impact on its viability. I note that the Minister of Citizenship previously stated that employers will always have the opportunity to hire the best-qualified persons and that these people can be found in the designated groups.

With reference to the principles that GPMC has endorsed, GPMC supports the principle of employment equity and recognizes the need to remove barriers to employment for specific target groups.

GPMC is also committed to a practical and progressive employment equity policy which takes into consideration the realities of today's workplace and does not undermine the merit principle. Quotas and numerical targets can become ceilings and therefore undermine this principle.

GPMC believes that the key criterion for determining whether there is equity in employment should be driven by placement opportunities within each company and the availability of qualified individuals within the labour pool. As such, efforts and results should be the benchmark for success, not the process.

Employment equity or workplace diversity should be a core value of organizations and seen as a strategic business and economic imperative.

Employment equity legislation and definitions must be harmonized with other government initiatives. Legislative requirements should not be administratively onerous or costly.

Disclosure of information should be non-proprietary in nature.

GPMC believes the achievement of employment equity is a shared responsibility between employers, government, employees, employee representatives,

specific target groups and educational institutions.

We believe government has a key role to play in ensuring that the educational structure and funding are available to ensure that the labour pool is qualified to fulfil performance expectations. Government should also play a part in providing information on the status of the labour market.

Unions and other employee representatives have a key role to play in communication and consultation with other employees and employers.

Consistency of definitions among employment equity programs at all levels of government is also essential.

**Mr Frakes:** As Murray indicated, these principles that were developed by the GPMC were drafted over two years ago. Over the past 18 months, I've had the opportunity to work with the minister, the commissioner and their respective staff in the drafting of the regs and the statute itself.

I'm a member of the minister's advisory panel on employment equity, I have participated in the commissioner's advisory panel for consultation, I participated in the advisory panel on the drafting of the regulations and I'm on a working group on employment issues for persons with severe disabilities.

Throughout my involvement in employment equity, I have repeatedly heard one overriding principle expressed by both the minister and the commissioner, and that is that the legislation must be fair, it must be effective and it must be workable.

As a business person, I endorse the principles of employment equity, and I say today that the legislation that is before you is fair, it can be effective and it is workable.

Now, there are aspects of the proposed legislation that concern us. Those aspects are relative to specific language within the act that can impact on the effectiveness of the legislation. We are not concerned that the language is burdensome; it is not. Nor are we concerned that our businesses will have to act in a different manner. We are concerned, however, that there is language which can be detrimental to the foundation of employment equity, a foundation which is formed by the creation and maintenance of jobs in Ontario.

Our concern centres around the requirement that business share confidential and proprietary information. Specifically, subsection 14(6) would require the employer to "provide the bargaining agent with all information in the employer's possession or control that is necessary for the bargaining agent to participate effectively in carrying out their joint responsibilities." This language is far too broad. It will create situations of conflict and controversy.

It must be remembered that the employment equity plan will cover all employees in a workplace, not just those in a bargaining unit. Any information that should

be required to be available to the bargaining agent should relate only to those individuals and jobs within the unit itself, not "all information that is necessary." This could put an employer at a significant disadvantage during contract negotiations.

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Secondly, safeguards must be provided as to access of information that may be requested by the commissioner's office under section 22. For a plan to be effective, it must be part of the business's long-range strategy. Elements of that strategic plan must be incorporated into the employment equity plan itself. Under the Freedom of Information and Protection of Privacy Act, any information that would be provided to the commissioner can be obtained by the general public and specifically business competitors.

A business located in Ontario would be placed at a distinct disadvantage if proprietary information or the business's long-term strategic plan is required to be provided under either subsection 14(6) or accessible to the competitors, either inside or outside of Ontario, under section 22.

**Miss Helen Wakely:** I would like to address accommodation. Subsection 20(2) of the regs requires employers to include in their plan the types of accommodation for "(1) communication and human support services; (2) technical aids and devices; (3) job design, including work-hour flexibility and work restructuring; and (4) workstation modifications and physical access to the workplace."

Many employers question if it's appropriate to raise the above specific accommodation requirements in the legislation. Because of the broad range of disability issues, we believe each issue should be dealt with on its own merit, in its own case, within the reasonable accommodation guidelines already established under the Human Rights Code, which is also identified in section 20 of the act.

An example of our concern would be, suppose we have a receptionist who must work from 9 in the morning to 5 at night. Do we have to accommodate our flex hours when hours worked is a requirement of the job? This is not reasonable. The act specifically spells out, however, flex hours as a type of accommodation. On the other hand, if we have a blind receptionist, then it would be reasonable to accommodate with a Braille switchboard and the necessary equipment.

Let the employer and the employee find appropriate and reasonable accommodation within the existing parameters of the Human Rights Code. We recommend that subsection 20(2) be deleted.

The next item I wish to address is education and communication. Government should take a long-term strategic approach to the issue of employment equity. While barriers to employment equity may be removed



at the company level, it is essential that the labour pool be qualified to fulfil performance expectations. Sound education and training policies across the country are required.

Government has an important role to play in ensuring that an effective educational structure and funding are in place.

Government also has a role to play in changing the way society views some members of the designated groups. Employers must have active and extensive support through government efforts in this area if we are going to be able to carry out our responsibilities effectively. We recommend that education and communication be a cornerstone of the commission's role.

**Mr Frakes:** To summarize, GPMC is committed to employment equity because it makes good business sense. We believe that employment equity is not only the right thing to do but it can represent a strategic and competitive advantage.

The consultation process that has been coordinated by the government has been fair and open. The government has demonstrated a commitment to introducing workable and practical legislation. This can be achieved if specific attention is paid to limiting access to propriety information, as outlined under subsection 14(6); deleting subsection 20(2); the limitation of access to confidential information provided to the commissioner under section 22; and strong, supportive education and communication programs by the government.

The process of employment equity is not a short-term project. The legislation will have a long and lasting impact. The GPMC wants to ensure that this impact reflects the overriding principle that has been voiced by the minister and the commissioner that it be fair, that it be effective and that it's workable.

**The Chair:** Thank you. We'll begin with the third party. Miss Tilmore will begin. I've done it again.

**Mr Tilson:** Someone's at the wrong meeting.

**Mr Callahan:** Something's going on over here.

**The Chair:** Mr Tilson, when you put up your hand, I confused the gender. Five minutes per caucus. Ms Witmer, please begin.

**Mr Tilson:** Who's asking questions?

**The Chair:** Ms Witmer will begin the questions.

**Mrs Witmer:** Thank you very much, Mr Marchese.

I thank you for your presentation. You've indicated that you are committed to the principle of employment equity. You've also indicated, however, that hand in hand with the employment equity policy there is a need for the government to take a long-term strategic approach and that sound education and training policies are going to be required and that the government has a role to play. What exactly do you see that role being?

**Mr Frakes:** In the area of education, I think you

have to view it from an employer's standpoint in that our feeder groups, if you will, are the general population. We have a responsibility, once a person has entered the workforce, to ensure that they have all the necessary skills required to perform their job. We're talking before that. We think it's incumbent upon the government to ensure that as they come into the workforce they have the basic skills to work with, the old-fashioned 3Rs, if you will. They've got to be able to read, they've got to be able to write, they've got to be able to understand basic math. I think that is one of the foundations which the government must look to in the area of education.

Specifically, then, in the area of employment equity, I think there is a tremendous job of education that's going to be required by the commissioner and by all levels of government to let people know what employment equity is. Equally, they must let them know what employment equity is not. It makes good business sense for us to have employment equity. We need to let that be known.

**Mrs Witmer:** So, obviously, the educational component on both those fronts is going to be extremely important for the success of this legislation.

**Mr Frakes:** Yes, for the success of employment equity.

**Mrs Witmer:** That's right, and I guess the success and the feeling of fairness and equity throughout the entire province, among the people in the province. You also indicate that you are "committed to a practical and progressive employment equity policy which takes into consideration the realities of today's workplace." You say, "Quotas and numerical targets can become ceilings and therefore undermine this principle." Could you explain what you mean? It's on the first page; it's one of the guiding principles.

**Mr Frakes:** Yes, I'm familiar with it. The difficulty you get into is that what we should be doing is looking for the most qualified individuals to perform a task, if you will. The concern is that if a quota is set, a number, a target, then what happens once that target is achieved is that people will stop. The objective of achieving employment equity shouldn't be, in any one environment, the end goal. This is ongoing. We're changing the way we look at business. I think the difficulty is that if you set a quota, then it's very possible someone will say: "Fine, I've got my numbers. I don't have to worry about it." A very qualified individual among the targeted group may apply for the job, but they've hit their number.

**Mrs Witmer:** Actually, that's a concern we've heard expressed by some of the other presenters as well.

**Mr Tilson:** I appreciate your comments with respect to subsection 14(6). I think one of you—I forget which one—said that if you left it up to the employer and the

employee, they would work it out. The difficulty of course is that people are coming to this committee and saying that there has been discrimination long enough, that there has to be mandatory legislation. Mr Hargrove from the Canadian Auto Workers, for example, said that our experience with employers is that they will not make employment equity a reality until they are forced to do so. In other words, the words of many employers are simply words. Do you have any comment on those comments?

**Mr Frakes:** Probably several, but I've got only about 11 minutes. First of all, I think the comment which was made and which we referred to, that it should be left to the employer and the employee to find appropriate accommodations, was in reference to accommodations specifically. It wasn't in reference to general working of a plan, so it's not applicable.

Secondly, I guess I would take issue with the comment, the generalization, that if left to their own devices the employer community will not practice employment equity. As I said, it makes good business sense. All one has to do is look at the demographics as to what's happening in this province, and if an employer wishes to have employees in the future, the demographics are going to take care of that. I don't think the comment that there is a systemic approach to discrimination that's practiced by all employers—as I said, I would take great issue with that.

1420

**Mr Mills:** Thank you for your presentation. I represent the riding of Durham East. Lots of manufacturers and small businesses have come to me over the weeks and said, "You know, what Bill 79 will do is force us to hire unqualified people." I just want to know what your thoughts on that are. Have you, obviously representing a huge employer, got any thoughts on that? Do you have any concerns about that?

**Mr Frakes:** In one word, no.

**Mr Mills:** That's good.

**Mr Frakes:** It goes back, I think, to when we talked about the responsibility of education. With or without employment equity, we want to have a qualified workforce. A person's gender or the colour of their skin does not determine whether or not they're qualified. Their background, their education determines whether or not they're qualified. It's essential for all of the working force of Ontario to be qualified and to have the basic skills and the necessary tools, if you will, to take with them to the workplace. No, I don't see employment equity creating the situation in which an employer is required to employ unqualified people.

**Mr Anthony Perruzza (Downsview):** Just very briefly, I'd like for you to expand just a little bit on a comment you made about rendering business more competitive. If I read your comments correctly the first

time, would that advantage still continue if you were to reduce some of the restrictions in the legislation and make employers who have fewer than 50 employees subject to the legislation as well?

**Mr Frakes:** I'm going to try to take your question one point at a time and start at the end. Part of the question, I know, that arose in the regs—we're not here to discuss the regs, but I think it's important—is that if you start talking about an employer with fewer than 50 employees, you're talking about a very small entrepreneurial type of operation. Whether we like it or not, there will be paperwork involved in this.

The example was used several times that we're not talking about a large office complex they work in. They do their books, they do their paperwork at night at the kitchen table. This is part of the reason why I don't think it's necessary to go below where we're at. You have to look at the impact upon business. As the gentleman said, I represent a large corporation. Obviously, it will have an impact on our business, but it's not an overburdensome impact. If you're talking about a small employer, then it can have an overburdensome impact on them. No, I don't think it should go below that level where it's at right now, sir.

**Mr Perruzza:** Uncompetitive?

**Mr Frakes:** I'm sorry?

**Mr Perruzza:** You render business more competitive. You made a comment to that effect.

**Mr Frakes:** It makes good business sense, and the reason it makes good business sense is, first of all, in our industry you have to look at who our consumers are. I mean, those consumers out there are the targeted groups, if you will. We target the consumer. The demographics are changing within Ontario. It makes good business sense that we make sure that our workforce is representative of the community in which we operate, where we sell our products.

**Mr O'Brien:** If I could add to that, that helps in our decision-making. Part of our viability is our ability to make good decisions, sometimes very short-term in our industry as well. Being able to make those decisions based on the talent that we have working for us means that we have to reflect our marketplace, and our marketplace is diversified. Just to be viable, we have to remain diversified in our decision-making as well.

**Mr Perruzza:** Just to play devil's advocate, last question: If it makes good business sense, why do we need legislation?

**Mr Frakes:** That is a good question. Next question. *Interjections.*

**The Chair:** He's going to answer. He understood your question.

**Mr Frakes:** I think that from our standpoint we have to look at what is happening in the marketplace.



Not all businesses may view it that way. Again, remember what we said we were looking at, the overriding principle: fair, effective and workable. Other businesses may do it differently. We're talking on behalf of our businesses. The principles are good; it's the right thing to do. I don't know if that answered your question to your satisfaction, but it is the right thing to do.

**Mr Curling:** As a matter of fact, Tony just asked the question I had. If it made good business sense and business people, as they are all along, are concerned about profits and running an efficient company, they never did do any good business sense by recruiting the best, meaning that they did not go on merit completely when they were recruiting, because today we have legislation that is asking that those designated groups that have been excluded should now be included by law and that it will be mandatory. If you don't do that, you'll be fined accordingly.

Do you feel that the merit principle—because you sat on that committee—should be enshrined in the legislation, considering that all along it made good business sense and they did not do it and then therefore we would put it there that merit is one of the primary things to be considered? Many of the designated groups are saying they are qualified and they were excluded and they're prepared to compete. Do you feel that merit should be included as a part of the legislation here?

**Mr Frakes:** Merit must be included in the real business world; that's one of the basic rules. We must have qualified individuals. If we want to compete, we must have a workforce that is competent, we must have a workforce that is committed to do what the needs be and we've got to work together. If you're asking, is merit an essential part of the employment equity plan—

**Mr Curling:** And include it in the bill.

**Mr Frakes:** Yes, sir, it must be.

**Mr Curling:** You sat at the table. The seniority issue came up when you were helping to draft the legislation with the minister. What agreement did you come to, realizing that seniority conflicts with the principle of employment equity?

**Mr Frakes:** First of all, we didn't make that assumption. Secondly, part of the difficulty is that you cannot sit here and try to draft a piece of legislation that is going to cover every specific situation that's going to occur in the greater public and the private sectors. Part of the difficulty, I think, that we wrestled with so much in the regulations was trying to get language that fit every situation. You cannot do it. You have to have language broad enough to cover as many situations, still with the goals, the overriding principles, in mind. I can't sit here and answer that, because how will I answer your question? Are you talking about the public sector, the greater public sector or the private sector? Then, within the private sector, what's been the history

of the bargaining? I mean, there are so many factors that enter in to try to answer that. Regardless of your best efforts, you'll never have a piece of legislation that ever covers every situation you're going to encounter.

**Mr Callahan:** I notice in your statement that you say: "GPMC is committed to a practical and progressive employment equity policy which takes into consideration the realities of today's workplace and does not undermine the merit principle. Quotas and numerical targets can become ceilings and therefore undermine this principle." Then, in the next paragraph, you go on to say it all depends upon there being an "availability of qualified individuals within the labour pool."

Do you believe this legislation does see quotas as opposed to merit, at the exclusion of merit, and, even if it does support merit, but there's nothing to provide the qualified pool, but you're still required to meet the target groups, are you not going to have a reverse, negative reaction on the basis of what you've said, that it won't be merit, that it will be targets? They're two totally opposite questions.

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**Mr Frakes:** You have to look at the available workforce. In the example that I used at one point, if I am looking for a PhD in microbiology, then my available workforce is those individuals who have a PhD in microbiology. It's not the general public. So if the available workforce, my feeder group, if you will, has representatives of targeted groups within it, that would be what I would look for that I would draw from. It would not be the general population.

One of the difficulties with the act is there's a belief that the general population is where we draw all of our workers from. We don't. It depends on the specific skills and educational background we're looking for.

So no, I don't have any problem with that. I'm going to look where the qualified individuals are. It would make sense that if half of the college graduates are females, then half of my recruits should be females. If not, then I'm going to start asking questions why not.

**The Chair:** Mr Frakes, Mr O'Brien, Ms Wakely, thank you for participating in these hearings.

#### COMMUNITY AND RACE RELATIONS COMMITTEE OF PETERBOROUGH

**The Chair:** Community and Race Relations Committee of Peterborough. Just for clarity, Allison Ksander? Very well. You both have a half an hour for your presentation. You've seen how the process works. Please leave as much time as you can at the end for questions and answers, and would you introduce your colleague as well.

**Ms Allison D. Ksander:** Yes. My colleague is Tony Njoroge. Tony works with my organization in anti-racism education and community development. My name is Allison D. Ksander and I'm the executive

coordinator of the Community and Race Relations Committee of Peterborough. It really is an honour to be here and I thank you for your time.

A wise man once said that, "The road to failure is often paved with good intentions." Efforts to eliminate systemic discrimination and barriers for members of the designated groups in the workplace have been well intended and they have failed. Aboriginal people, people with disabilities, racial minorities and women see the Employment Equity Act as a commitment by the people of Ontario, for the people of Ontario, to absolute and positive results aimed at eliminating systemic and intentional discrimination in employment and irreversibly improving the quality of life for all Ontarians.

The act extends beyond the efforts of (1) affirmative action, which is prescriptive, and (2) equal employment opportunity, which is not goal-oriented. Employment equity entails active planning through surveys, research, goal-setting and evaluation and will afford partners in the labour market the opportunity to bridge historical gaps which threaten, if not limit, growth and success. Practices in employment equity are economic and social assets to Ontario. This is our time to grab the brass ring and run with it. Employment equity makes it possible for all Ontarians to be potential recipients of equal results.

Because the distinction between systemic discrimination and intentional discrimination is so blurred in our society today, it is not surprising that many will try to discredit and sabotage this whole process of the implementation of employment equity. However, those of us who advocate for fairness will gladly continue to support good work in this direction.

My submission, of which I assume everyone has a copy, attempts a clause-by-clause analysis of Bill 79 and the regulations. Today I would like to highlight a few of the supporting arguments and recommendations.

In its approach to the problem of systemic discrimination, employment equity addresses process. It forces employers to look at and examine the way they do things in the areas of recruitment, hiring and promotion. Self-evaluation can sometimes be a forceful tool in the implementation of change. The ultimate effect would be that employers would learn that the best person for the job is not necessarily the white male.

At this point what comes to mind is an example of something that happened in my own area, my region of Peterborough. There was a situation where one of our employers who has a mechanics shop tried to get a mechanic desperately. There were three calls for applicants made over a six-month period, and each time a white male was chosen for the job. The first person could not handle the work. The second person was totally incompetent. He showed up for work late and was often intoxicated when he did show up. At the third

try, they realized that they were lowering their standards if they were to take the next white male on the list.

Finally the person who was in charge of that particular recruitment went to the one racial minority who was employed in the company and asked just to discuss the situation, the problem that they were coming up against, because they were left with one applicant who was qualified on paper. The only reason that was given for this person not being called for an interview was that they could not pronounce his name. He was Vietnamese.

The person who was approached did encourage the recruiter to try the Vietnamese, give him an interview. There was nothing to lose because they couldn't find anyone. That applicant was hired. This was three years ago, and the company has not regretted its decision.

A process like employment equity will force employers to identify just who is the right person for the job by looking at: What is the job? What is required? What are the specific skills that are required for the job?

Though forceful on its own, the Employment Equity Act will be most effective accompanied by supportive mechanisms such as the Human Rights Code, anti-racism initiatives in the form of policies and practices, access to trades and professions and equity in education and training.

Basically, the bill assumes that most Ontarians want to act equitably, so in my view I see it as forcing the attitude and later the action that existing barriers to employment need to be removed. It supports the view that for us to wait for employers to come around and that equity in the workplace will happen naturally is for us to continue to bury our heads in the sand.

When we consider specifically the racial minority youth of today, the situation is critical. Racial minority youth will no longer wait to be granted their right to equal treatment. They will not accept the hardships and frustration they have seen their ancestors experience. The level of frustration is extremely high in this part of our society. It is our responsibility as parents and leaders to finally allow for all sectors of our Ontario to fully participate in the workforce.

Because all of Ontario will ultimately benefit from employment equity practices in the long run, I strongly recommend that the preamble to the act, the juice or the spirit of the act, should contain a statement of the positive effects of employment equity on Ontario's mainstream population. Members of designated groups in general and racial minorities in particular need not be continually perceived as being done a favour by the government. Even though mainstream Ontario may admit that we all would benefit from fair hiring practices, it should be stated in the act, not only as a reminder but as a source of encouragement.



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Another important necessity, in my view, is the need for clarification of some of the definitions as presented both in the act and in the regulations. In particular, I believe that the term "racial minority" is not clearly defined. I can just see opponents to this act trying to trivialize the intent of the existing definition, which I must say to me was quite confusing upon first reading. I suggest that it be clearly stated that a person is a member of a racial minority in Ontario when that person is non-white, non-Caucasian and non-aboriginal. As I've suggested in my submitted brief, the definition should go further in saying just who is a racial minority. It goes on to say that a racial minority may be black, and we talk about what that might be, East Asian, South Asian and on and on, and of course a person of mixed heritage. Such a definition would serve to clarify for all just who is being targeted for making right the wrongs of the past.

Though employers may recognize that employment equity will have to be implemented somewhere down the road, as the bill stands now, the only incentives for employers are avoidance of punitive measures. Taking the defensive position is a natural reaction. Thus, to encourage employers to implement change as quickly as possible, incentives in the form of tax breaks are recommended. It is not productive to perpetuate an atmosphere of animosity when implementation of employment equity is supposed to be a cooperative process between employers and employees.

In my view, the regulations should be such that the commission is allowed more space to manoeuvre and do its work in enforcing the act. That employers set their own goals and timetables is troubling enough for members of designated groups. However, more distinctive wording is necessary in areas like subsection 14(3), where it says that the employer "may" identify employment policies and practices. My suggestion is that this should be changed so that the employer "shall" identify policies and practices.

A recommendation which addresses specifically small-town Ontario is that statistics for setting numerical goals should not be limited to geographic boundaries. Racial minorities in areas outside the Metro area suffer frustrations and hardships most of us cannot perceive. In Peterborough in particular many of the racial minority community are refugees and other very new comers to Canada. Many qualified people remain at home wasted as their children try to cope with an ethnocentric, Eurocentric education system. Experienced social workers end up being part-time sales clerks at secondhand stores while other professionals end up being truly professional volunteers.

In my region, employers and other white males have committed themselves to ensuring that the Employment Equity Act is not realized. For example, in Belleville a

member of the city council has made a public call for support just to fight employment equity, and the intensity with which he made that call makes some of us shudder. In Peterborough the manager of our chamber of commerce says that the law is unnecessary, that it would lead to reverse discrimination and that if employers are forced to implement the changes, they would have to leave Ontario.

This type of talk is not at all encouraging, but organizations like the Community and Race Relations Committee of Peterborough and other supporters of Bill 79 across the province vow to work with the commissioner in achieving justice and equality in Ontario.

Racial minorities in places like Peterborough do not see much hope for change in their community. They do not look forward to their children having a chance at employment in these types of communities, and families are not hopeful.

The proposed Employment Equity Act, I must say, does not address the racial minority community in small-town Ontario. It is my belief that the Employment Equity Act, however, will propel Ontario into a future of economic and social success that is second to none. It is our hope that the Employment Equity Act will be totally unnecessary and will be abandoned and abolished some time before my generation of activists and advocates leave this place for ever.

**The Chair:** Thank you. Ms Carter, five minutes.

**Ms Carter:** I would like you to welcome you warmly, Allison and Tony, to Queen's Park and to thank you for taking the trouble to come and also for your very thoughtful and effective presentation.

Now, you have told us something about the situation in Peterborough as regards race relations and employment equity. I wondered whether you could add to that and whether you could tell us something about the kind of work that your committee is doing.

**Ms Ksander:** With respect to employment equity, our committee sees employment equity as an extension of anti-racism initiatives. In that aspect, we have conducted several workshops and information sessions on employment equity and we continue to do this in our community. We've spoken with people from the business community, people from the labour unions and also other equity groups. We work with our aboriginal community and in very close contact with them and we continue to—what should I say?—charge ahead in the name of employment equity.

**Ms Carter:** You say that you don't think the act applies too well to a community like Peterborough. I wonder what, if anything, you could suggest that could make it apply more effectively.

**Ms Ksander:** I think that some more forceful wording with respect to looking at the barriers to entering the workplace should be included in the act so

that people in small-town Peterborough cannot continue with the type of arguments they use now. To use an example, the public school board constantly says it is doing fine in the numbers that it hires. Those numbers are close to zero, if they're not zero. They use the Employment Equity Act as their excuse, because they say that we have a small population of racial minorities in Peterborough.

However, in addition to the fact that the population is small, we do not see the act of hiring racial minority teachers in the system as being beneficial only to racial minority parents and students, and that's why I think the preamble should support this type of thing by showing that this type of exposure would be good for all people, all students, because our city is an island unto itself. We seem to live in sort of a bubble there.

**Ms Carter:** Though it is changing. We found with the Ministry of Natural Resources coming, it has many different employees. Most specifically, you seem to feel that the role of the union in developing employment equity plans should be limited, and I'm just wondering why you say that. You recommend limiting joint responsibilities for bargaining agents in the development of the plans. I just wondered why you would say that.

**Ms Ksander:** I don't remember why I would say that. Which page was that?

**Ms Carter:** I couldn't tell you exactly.

**Mr Tony Njoroge:** What's the number of the recommendation, please?

**Ms Ksander:** Which recommendation was that?

**Ms Carter:** All right, can I try on a different one, if you want to look that up?

**Ms Ksander:** Yes.

**Ms Carter:** You want to change—this is your recommendation 7—to say, "Every employer shall ensure implementation of employer's equity plan"—

**Ms Ksander:** Yes.

**Ms Carter:** —which is stronger than the wording that we have at the moment. There just is a thought there that if that requirement were tightened up as you're suggesting, an employer might say to himself or herself, "If I make this target too difficult to achieve, if I'm too ambitious and I fail, then I'm going to be in trouble because I haven't met my goal." But if we left the wording as it is at the moment, then the employer might be encouraged to be a little bit more ambitious.

**Ms Ksander:** Yes, I agree with that. However, I think we should look at the whole picture, because if the commission is allowed more room to see and to monitor just what type of targets the employers are setting and to monitor just why they're setting those targets, then they're having a statement which says that the employer shall ensure implementation of their plan that works in with that. I don't think we should take

things just out of context there. There are a lot of changes that need to be adjusted to make it all stronger and more efficient, and I think giving a little more leeway for operation of the commission would help in that area.

1450

**Ms Carter:** Do I have more time?

**The Chair:** No, we ran out. Thank you. Mr Curling.

**Mr Curling:** I dislike the question Ms Carter asked first, but I won't ask you that question. I think that your presentation is excellent. I think the format you've laid before us is something that we can use later on. It brings me to the point to ask you this: I presume when you went through in that detail and had so many recommendations—you seem to be someone very strongly committed to employment equity, like all of us here, and the base of it is to have effective employment equity legislation.

Would you say that the bill, as the legislation sits at the present, is a bit weak and vague and your recommendations here would strengthen it and put some meat to it, where one can implement a better employment equity bill?

**Ms Ksander:** That's why I made some recommendations, in the hope that we could make the bill more forceful and more effective, yes.

**Mr Curling:** Yes, that's the concern—

**Mr Perruzza:** He's going to introduce that as amendments. I know it.

**Mr Curling:** Definitely. The basic idea, taken up from Mr Perruzza's question that we may use this as our recommendation, precisely so. What we are trying to attempt to do here is to listen to the public and, when recommendations like these are made, to take them into consideration and present them as ours and say, "Yes, we have listened, the Liberal Party has listened," and present them to the government of the day. Hopefully, they will amend it accordingly.

Did you see while you were going through this that any part of it, and I haven't had the chance to look, whether or not some things in the regulations should have been placed in the legislation? You don't have to be specific in any way.

**Ms Ksander:** There are some things that are in the regulations that are already in the legislation.

**Mr Curling:** You think there are some duplications?

**Ms Ksander:** There are some things that are in the regulations that are in the legislation already. Are you trying to say that—

**Mr Curling:** No, I'm just—

**Ms Ksander:** Are you asking me if there are additional things?

**Mr Curling:** Yes. You see, when we got the legislation, I really felt there was not much to debate there.



But lots was in the regulation that made the legislation a bit clearer.

**Ms Ksander:** Yes.

**Mr Curling:** I just wondered if you felt that things that are in the regulation could be transferred to the legislation.

**Ms Ksander:** I'm not sure if I understand the whole mechanics of what that would mean or the ramifications of that. The only thing that comes to mind with respect to regulations and the bill was my recommendation of clarity in the definition. I think that should be clear in the regulations as well as in the bill.

**Mr Curling:** And that is precisely the question. Good answer. But what I want to ask you too is that I notice in here you spoke about the Human Rights Commission.

**Ms Ksander:** Yes.

**Mr Curling:** We have concern that, in establishing a commission of employment equity at a tremendous amount of cost the concentration is not of a bloated bureaucracy getting nowhere as a matter of fact. The fact is that at the present for people who have concerns about human rights issues it takes two to three years before their case could be heard. They're establishing an Employment Equity Commission now and we hope that it will expedite matters. As a matter of fact, it is clear what it does.

Do you feel that the definition of the Employment Equity Commission and its role is clear and there are no duplications in the sense of the Human Rights Commission and the Employment Equity Commission?

**Ms Ksander:** No, I have no confusion in the role of the Employment Equity Commission as opposed to that of the Human Rights Commission. I think the Human Rights Commission, as it stands, addresses individual rights and it is complaint-driven; however, the Employment Equity Commission focuses on employment equity. It is also strengthened by the Human Rights Code and that commission, and I do not see any type of duplication in that area at all. Actually, I think it just serves to make the whole thing better and stronger.

**Mr Curling:** All right. I have no further—

**The Chair:** You have time for a short question.

**Mr Curling:** A very short question. One of the other concerns—and I'll just continue with the Human Rights Commission and the Employment Equity Commission. People who have come before us and have spoken to me outside of the committee say that the length of time that it would take to deal with a case is rather frightening.

As a matter of fact, a lot of people believe that as soon as the employment equity law is in place, immediately they can be addressed. I presume the first case would come about in the year 2000 and something

before you can really put it to the test. Did you find that as you walked through the bill: "When will they hear my case? I've waited so long." Did you find that it would take a long time to hear those cases?

**Ms Ksander:** Actually, yes. I forgot to put that in my thing there. I thought you had overlooked that. But one of my concerns was that we do need a complaint procedure that is uncomplicated. One thing I say about that too is that it should be as sensitive as possible. However, with respect to the length of time that it would take, that's one reason why I think the commission needs to be stronger and needs to have more room to manoeuvre and to take hold of things, take a handle on things, to move ahead with complaints.

**Mr Njoroge:** Let me just add to that, about the procedure being long and what have you. I think if a lot is put into the education also of the employers about I guess the positive effects of employment equity, then that reduces the number of cases you have on the other side. I mean, we've had a lot of people here saying that it makes good business sense.

I think from the work I've done in Peterborough, there is some perception that a lot of the people from the equity groups don't merit certain jobs. So it's feared that then people will have to hire people to meet their targets. That's not the case. There's one thing about the whole process that's really good, and I've been involved in part of it, in one of the organizations there that's part of federal contractors, and that's the employment systems review.

The things you find out in that process, it's like looking at yourself in the mirror and finding out exactly where the systemic discrimination lies. With commitment from management in any organization, if you're really serious about being competitive and hiring the best people, that's the best mirror you can ever have.

**Mrs Witmer:** Thank you very much for your presentation. You obviously have consulted with many people in your community and come up with some concerns. Also, I appreciate the fact that you've put your recommendations into the paper as well.

You indicate here that there is a need for a strong statement in the act's preamble on the positive effects of employment equity on Ontario's mainstream population. I would agree. I think there is a need for a positive statement.

I have personally expressed my concern about what I perceive to be one paragraph which blames systemic and intentional discrimination in this province totally on the employer community and totally fails to recognize that there are other factors, such as historical, social and demographic reasons as well, and I believe that particular paragraph is very damaging.

I think if we're going to have cooperation in the province, we all need to work together. I think the

preamble should be positive and talk about what can happen. What kind of statement would you suggest that would be positive, that would really encourage us to work together cooperatively and in consultation?

**Ms Ksander:** I do not have a draft of the preamble here. I didn't prepare one. However, I do not think we should take out the fact that systemic barriers—the reasons for implementing employment equity. I think we need to have that in there; it's necessary.

**Mrs Witmer:** That we would blame employers?

**Ms Ksander:** If the systemic barriers that are being addressed by this act are barriers that exist in the workplace and employers are responsible for those. It is systemic, it is historical, and I think we need to put that in there also. I don't see why that should be taken out. I think it should be added. Something should be added there in an effort for members of designated groups and also for employers to recognize that they too would benefit from this type of act. I do not see why we should take it out. I wouldn't want to take it out.

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I think we have to acknowledge why these things have happened, we have to acknowledge why we have to have this act. It's embarrassing for members of mainstream Ontario, but we have to face up to some of these embarrassments in order to move ahead and be progressive. It's time to throw the embarrassment behind us, look at it, renounce it and then move ahead.

**Mrs Witmer:** I guess I would have a question for you, because you used the term "mainstream," and I've heard it used by probably two other groups today and yesterday. I'd like you to define for me who or what you determine to be mainstream Ontario.

**Ms Ksander:** In my community we define mainstream Ontario as white males.

**Mrs Witmer:** My definition would have been other than that, so I'm glad I asked you for that type of clarification. I appreciate that.

**The Chair:** Mr Tilson, one question.

**Mr Tilson:** Along that line, I interpreted from your presentation that this bill is more a Toronto bill, that it doesn't adequately deal with the communities outside of Toronto; I interpreted it that way. My question to you, continuing what Mrs Witmer was saying, is whether it is possible in the way we have been moving, slow as it may be, to legislate non-discrimination without creating a backlash. It may be possible in Toronto, but is it possible outside of Toronto?

**Ms Ksander:** I don't think we can legislate people's consciences; we cannot legislate personal beliefs. We can legislate actions and reactions. The part of the bill that does not speak to small-town Ontario is the part which talks about the quota—sorry, the numbers and the percentages—

**Mr Tilson:** That's what we say it is.

**Ms Ksander:** —that have got to be looked at by the employers. However, what the bill does speak to, and I have seen some effects in our community in that area, is that it forces employers to really re-examine themselves and to examine their practices, because what employers do feel is that they are being watched. Even though they argue against certain things and kick up quite a fuss, they recognize that they are being watched, and they are uncomfortable.

People from my community, a racial minority community in small-town Ontario, specifically Peterborough, are not striving to make the employers feel comfortable in perpetuating their discriminatory practices in hiring. We would like to be there and we'd like them to know that we are there to see and to recognize what they are doing, and I think they too are recognizing it.

Our college, Sir Sandford Fleming College in Peterborough, has attempted doing its own evaluation and so has Trent University, even though it might not have been on a large level. But what has been done has been very revealing, and the barriers and the discrimination have been so shocking that people who are in the positions of power and positions of control have been basically blown away by what they have discovered. This is where this act, even though I have criticized one certain part of it with respect to the numbers—the effects of something like this are already trickling through our community.

**The Chair:** Thank you very much. I want to thank you both for taking the time to come from Peterborough to make this presentation to us today.

**Ms Ksander:** Thank you.

**Mr Fletcher:** On a point of clarification—

*Interjections.*

**Mr Fletcher:** Well, on a point of order.

**The Chair:** A point of order I'll take.

**Mr Fletcher:** On what Mrs Witmer has said about the preamble saying that the employers were the problem, it does not say that in the preamble. What it does suggest is that people do have a problem in employment practices, but not—

**The Chair:** It is not a point of order. Thank you, Mr Fletcher.

#### ASSOCIATION OF MUNICIPAL CLERKS AND TREASURERS OF ONTARIO

**The Chair:** The Association of Municipal Clerks and Treasurers of Ontario, welcome. You have half an hour for the presentation. Please leave as much time as you possibly can for the questions. Would you, as the chair, please introduce the others.

**Mr James McQueen:** Thank you, Mr Chair. Good afternoon, ladies and gentlemen. My name is Jim McQueen and I'm president of the Association of



Municipal Clerks and Treasurers of Ontario. When I'm not doing this volunteer job, I'm treasurer and director of finance for the town of Milton. With me today are, on my left, Janice Platt, and Janice is manager of human resources for the county of Peterborough; to my immediate right is Robert Heil, who is the chief administrative officer for the town of Lincoln; to Bob's right is Kathryn Ironmonger, who is administrator-clerk for the village of Erin. The three people I have introduced have been part of a project team that worked together to put the paper on the table that you've received from our organization.

I would like today to begin by giving you a little background about our organization, the Association of Municipal Clerks and Treasurers of Ontario; for the sake of brevity, from now on it's AMCTO. AMCTO currently represents approximately 2,300 municipal professionals across the province. The association's membership is largely drawn from the supervisory and managerial level in municipalities.

As part of their jobs, the association's members are responsible in whole or in part for the human resource function within their municipality. As a result, our members have expressed a strong interest in Bill 79 and its effect on the municipal sector. I'm here today to put forward the association's position on this bill and to try to explain to you why the association has a number of serious concerns with regard to the legislation in its present format.

In order to conduct its review of Bill 79, AMCTO struck an ad hoc project team composed of representative members of our association. By way of information, two hold the position of clerk, two are town administrators, one is a clerk-treasurer, and two are from the area of human resources in the municipal sector. This team reviewed the bill with an eye to determining its impacts on AMCTO's members and the municipal sector in general.

Let me begin my presentation on the bill by stating emphatically that AMCTO is completely committed to the concept of fairness and equality within the workplace. Having said this, however, AMCTO has conducted its review of this bill with the hope that objectives of fairness and equity could be met through the administration of the bill's requirements.

AMCTO conducted its review with three general principles in mind. The first principle is that all bills, not just Bill 79, should be written in such a manner as to be as inclusive in nature as possible. What I mean by this is that AMCTO believes that pieces of legislation should not rely upon regulations in order to explain and clarify their meaning.

This belief is a natural one for the association's members, as they must administer a variety of acts on a daily basis as part of their jobs. Moreover, municipal bylaws don't have the luxury of being able to rely upon

regulations to clarify their meaning. In a municipal setting, a bylaw must stand on its own. Staff must get it right the first time.

In the case of Bill 79, AMCTO believes that the proposed legislation relies too heavily upon regulations to explain its intent and to provide for its administration. AMCTO believes that Bill 79's reliance upon regulation is not only inappropriate and administratively cumbersome but is also genuinely undemocratic. Since regulations can be changed without going through the open legislative process, they are more likely to be unworkable, in the municipal setting at least.

The second principle is that AMCTO objects strongly to any form of mandatory goals, quotas, timetables or objectives. The association feels that such measures are, in general, unfair, and in particular, not appropriate for the municipal setting. Such measures have met with mixed success in other jurisdictions, and AMCTO would not like to see this divisive issue become part of this legislation.

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Finally, AMCTO must disagree with the assertion made in the bill's preamble that discrimination exists in the private and broader public sectors due to systemic and intentional discrimination. No one can deny that discrimination exists, but it is AMCTO's view that discrimination and a lack of opportunity may exist in part due to intentional and systemic discrimination, but certainly not totally. There are many factors which may play a part in limiting someone's opportunity for employment; therefore, AMCTO simply cannot support this blanket assertion contained in Bill 79's preamble.

I would like to move on to provide the committee with some of the highlights from AMCTO's brief on Bill 79, keeping in mind the association's overall principles of analysis. Based upon these principles, AMCTO has been able to identify 10 key items which it feels must either be changed or made explicitly clear in the body of the legislation itself if the legislation is to prove effective.

These key items or terms are the following: aboriginal people; racial minority; employee/employer; positive measures; occupational categories; person; community; designated groups; disability; and accommodate/accommodation. In each case, AMCTO believes that clear, consistent and workable definitions are required.

To give you an example of this type of thing that AMCTO objects to, I would like to briefly discuss the question of the definition of "disability" and "disabled." While AMCTO supports the advancement of disabled individuals within the workforce, the association believes that such terms as "disability" and "disabled" should not be left to the regulations for definition. Without the inclusion of these terms within the text of the legislation, it is extremely difficult for anyone

reading legislation to say that the definition is appropriate.

AMCTO believes that this issue could easily be dealt with by placing a definition within the legislation itself. In doing so, the government would not be hiding behind the use of regulations to be prescribed later.

Consequently, AMCTO would like to see a clear, concise and workable definition introduced into the body of the legislation so that the term can be made visible to the association's members and so it can be workable within the municipal setting. The Workers' Compensation Act, for example, includes just such a definition. Certainly this bill we're talking about today could do the same.

AMCTO is also concerned about the general tone of the legislation with regard to the responsibilities of employers. The legislation appears to try to keep employee responsibility and bargaining agent responsibility to a minimum.

For example, employees are only required to return the workforce questionnaire; they are not required to answer any of the questions. The obvious difficulty with this is that employees may not participate or may choose not to answer certain questions. These actions will lead to inaccurate survey data and will make it more difficult for the employer to fulfil its obligations.

AMCTO believes that employees should be strongly encouraged in the legislation to correctly answer the questionnaire to ensure that employers can meet their obligations under the legislation.

Likewise, the bill should be amended so as to make it possible for the implementation committee to be composed of an equal number of employer and bargaining agent representatives. As currently written, subsection 14(3) of the bill should be interpreted as allowing more bargaining agent representatives to be on the committee than employer representatives. AMCTO believes that equity should work not only for designated groups but for the employer as well.

Another issue of concern to AMCTO is the determination of the number of employees within the workplace. Municipalities across the province often rely extensively upon part-time, seasonal, temporary or casual employees at different times of the year in order to conduct the business of municipal government.

The bill does not adequately define the term "employee," nor does it seem to contemplate the difficulty that a municipal employer will have in applying employment equity, given this lack of clarity.

In addition, municipalities as employers have at their disposal a number of long-term tools which can be used to train, retrain and promote employees. Such tools include training and apprenticeship programs and short-term municipal internship programs from the Ministry of Municipal Affairs. However, such measures are

largely ineffective with temporary or seasonal employees.

Furthermore, it will be extremely difficult for the municipalities to implement the requirements of the legislation for positions which are unique to the municipal sector. For example, volunteer firefighters are just such a group. The voluntary nature of their jobs and the fact that many receive no compensation for their efforts make it extremely difficult to include them with the municipalities' employment equity plan. It would be difficult for municipalities to make retention and promotion policies for workers who are not likely to become full-time. Furthermore, most if not all of these volunteers already have full-time occupations elsewhere within the community.

The association would also like to see this committee recommend that Bill 79 be amended by having the same time frames and requirements apply to both the broader public sector and the private sector. AMCTO can find no reasonable explanation as to why the broader public sector should be treated any different than the private sector in the application of the legislation.

A change in this treatment would mean, for example, that municipalities would have the same implementation schedule as the private sector, ie 36 months, and the municipalities would be governed by the same requirements as the private sector employers with regard to the application of the legislation.

The current shorter implementation deadlines for the public sector unfairly burden the municipal sector at a time when municipalities are downsizing and restructuring in order to deal with reduced transfer payments through the social contract and other means that have come about from the provincial government.

The provincial government's own actions and policy initiatives will make it extremely difficult for municipalities to comply with the legislation. The imposition of this legislation on municipalities and the association members may prove to be simply too much for them to cope with during these difficult times. If the private sector is to be accorded such consideration in this regard, so too should AMCTO's members.

To continue on with the administrative aspects of Bill 79, the association must state strongly its opposition to the creation of the Employment Equity Commission and the Employment Equity Tribunal. AMCTO believes that the last thing Ontario needs is another commission or tribunal. The creation of these bodies is simply a waste of money. Notwithstanding AMCTO's objection, the association recognizes that the government probably has no intention of eliminating these bodies based upon our recommendation.

As a result, AMCTO would recommend, as a compromise position, that the functions to be carried out by the commission and the tribunal be given to the Pay



Equity Commission or some already-existing associated body in order to eliminate duplication of effort and to save taxpayers money.

With regard to the tribunal itself, AMCTO believes that the tribunal should not be given the sweeping powers that are currently part of the legislation. Subsection 26(1) of the legislation opens the door to abuse of the complaint mechanism to any person or group that may wish to challenge an employer. Municipalities have already suffered through a similar problem with frivolous complaints under the freedom of information act. They do not need to go through this again with regard to employment equity. Moreover, the tribunal should not have the authority to impose any employment equity plan upon the municipalities or AMCTO members. Once again, the association believes that this is simply inappropriate.

In conclusion, I would like to emphasize AMCTO's desire to see changes made to Bill 79. The association cannot currently support the legislation in its present form. The association believes that employment equity is a laudable concept. However, this proposed piece of legislation is deeply flawed, in our minds, and would have negative consequences for AMCTO's members and municipalities.

It is our hope that you will take the time to read our brief in full and consider that our recommendations are made with the interest of our members and the municipal sector in mind. Thank you for your time and consideration.

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**The Chair:** Thank you. Three minutes per caucus.

**Mr Callahan:** I'd like to congratulate you for your brief and for having the guts to come before this committee. I found it interesting that a lot of groups are not prepared to come forward and say what you're saying because they'll be, I suppose—

*Interjection.*

**Mr Callahan:** Mr Chair, do you suppose you could keep the member of the government quiet while I ask my questions?

I find it interesting that you'd come forward, because a lot of people feel sort of intimidated in coming forward and even speaking on this matter, and I want to applaud you for it. I think your brief is one that shows a good deal of thought.

I suggested earlier this morning that the enforcement mechanisms in this bill are going to do nothing but create a very long number of jobs for lawyers as they flit back and forth between the Human Rights Code and these tribunals. I'd like to know what impact you see this having on the—

**Mr Perruzza:** I'm using this to support the amendment that you're going to bring forward.

**The Chair:** Please, some order. Continue, sir.

**Mr Callahan:** I'd like it if you can give us some idea, being treasurers and clerks of municipalities, of the impact, if any, the setting up of this, the carrying out of this and so on will have on the cost to taxpayers of various municipalities, if you've given that any thought. I don't know whether you have or you haven't.

**Mr McQueen:** I'll give you a scenario that will likely occur. As you know, in the municipal sector, like a lot of other public sectors these days, having our financial bases eroded in one way or another either through economic downturns in our own communities or through such things as the social contract and expenditure control plans, when you have that kind of revenue base loss coming your way it means you have to do with less horses, you might say, in the operation of the municipality. You have to realize that this whole area of human resources for a lot of us is done on a part-time basis, so there isn't the time to be devoted to a lot of new pieces of legislation that have fairly lengthy processes to them.

This piece of legislation seems to be one of the kinds of pieces of legislation that will cause a lot of administrative work in the municipal sector that we really don't need when we're suffering fiscally right now.

**Mr Callahan:** And just finally—

**The Chair:** Thank you.

**Mr Callahan:** That was it?

**The Chair:** It's three minutes. Mrs Witmer.

**Mrs Witmer:** You've indicated that you would like to consult with the minister. Am I to assume that up until this time you've not had an opportunity, as representatives of the municipal sector, to discuss this legislation with the minister?

**Mr McQueen:** I'll refer to one of my colleagues to respond to that question. The project team has been working diligently for some months now, and maybe Bob could deal with that question about involvement of the project team with ministry officials to date.

**Mr Robert Heil:** Our involvement, we received the legislation, and through our association we establish and draw on our expertise throughout the province. Those people are specialists, as we consider them, in our field. They sit down and begin reviewing draft legislation. We have a lot of discussions with Municipal Affairs people. They even attend some of our own meetings on a regular basis.

With this one the legislation was drafted. We struck a task force that began working with the legislation and only recently the regulations and this is our response. There has not been a great deal of discussion with this staff, so to speak, on that matter.

**Mrs Witmer:** I think you have here an excellent presentation. I think you've raised some very valid concerns regarding the legislation and its operation.

I guess I have another question for you, and that regards the expectations that have been raised by this legislation. We've had people make representation and indicate that if this legislation is passed there will be tremendous employment opportunities for the various designated groups. I guess if we take a look at the impact of the social contract—I indicated this morning that in the teaching profession there will be no new teachers hired in the next three years—are there going to be many job opportunities within the municipal sector in the next three years?

**Mr McQueen:** That's a difficult question to answer because it has a lot to do with the age of the employees in the public sector; it has a lot to do with how each individual municipality will deal with cutbacks. I would suspect that there will be job opportunities like there always have been, but they won't be to the same degree.

**Mr Mills:** Thank you for appearing. I want to put the record straight before I begin, and I'm not exactly a greenhorn in so far as municipal politics—I was a municipal politician for many years and also I have been the parliamentary assistant to the Minister of Municipal Affairs.

I have great concerns with some of the things that you say here, but before I get to that, I just want to read something out of the newspaper yesterday. You're all aware probably of the report that's come down from the legal profession, by Bertha Wilson, the former Supreme Court of Canada justice.

It says in this report, "Canada's legal profession is dominated by rich, old, sexist, white men who discriminate against women and ethnic minorities." That's one of the things she said. Then she goes on to say:

"Included among the findings:

"Women and ethnic minorities encounter discrimination at all levels of the profession starting in law school where there is a 'poisoned environment' of pervasive sexual harassment and discrimination.

"Female lawyers are pushed out of certain areas of practice and pigeon-holed into 'pink ghetto' areas such as family law, regardless of their personal aptitudes and preferences."

Now, sir, in your principles of analysis here, you say you strongly object "to the imposition of mandatory goals, timetables and quotas for employment equity." So ask me to pose the question to you, to your association, what makes you think that it's different in the municipal sector than it is in the sector of the so-called professional, elite legal profession? What makes you think that those problems are not there in the municipal sector for municipal workers as they are in the legal profession, which we look up to as being somewhat above all of this? What's the difference?

**Mr Perruzza:** If IBM can do it, why can't you?

*Interjection.*

**Mr Mills:** I like Tim. He's a wonderful person. But I want to know what gives here.

**Mr Heil:** Mr Mills, I think there's one thing that's very important that we noted. AMCTO is completely committed to the concept of fairness and equity in all cases. We, as municipal employees, represent through our councils the general public, as provincial government employees, county, and it is absolutely imperative that everything we do is not only fair and equitable but perceived to be fair and equitable. We in no way object in any way, shape or form to the basic principles behind it. In fact, we applaud any action in this regard.

Our problem is our declining resources, the difficulties we have in adherence to very strict timetables. We do want to implement, we do want to proceed with the implementation of what we may consider to be one of the most important pieces of legislation dealing with equity and fairness in this province as it affects designated groups. Our concern is that it's being treated by regulation, which is to me a secondary way to produce and deal with legislation. It also sets up some time limits which we are going to have great difficulty to comply with and it will create perhaps a great deal of employment for the lawyers trying to interpret and sort this material out, and we don't want to get into that. We want something—

**Mr Callahan:** Wearing the robes you're talking about.

**Mr Mills:** What?

**The Chair:** Please complete your thought.

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**Mr Heil:** Thank you, Mr Chairman. Our concern is that if the legislation were clear and precise from start to finish, similar to the province's Drainage Act, there's less likelihood of it being tied up in courts and tribunals and less likelihood that implementation would be a problem. In municipalities, and I'd like to say that we are more public than the legal profession, our hiring practices, hopefully—and I'm not saying there's not discrimination; I'm certain there is—with proper legislation, we will be able to implement. I'd like to say as a public organization I believe municipalities are not better than the legal profession, but perhaps more public and hopefully can resolve some of the discrimination problems.

**Mr Mills:** Time limits me from a response.

**The Chair:** We ran out of time. Thank you. I want to thank all of you for taking the time to come here and to participate in these committee hearings.

The next presenter is Mike Alexander. Mr Alexander is not here. The next presenter is Ratna Arya.

Is the Ontario Secondary School Teachers' Federation here, by any chance?

*Interjections.*



**The Chair:** Very well. What we'll do then is to allow the Ontario Secondary School Teachers' Federation to begin. In the event that Mr Arya comes, we'll have him present after that.

*Interjections.*

**The Chair:** Could I have a little order, please? I'm talking through both members here at once.

**Mr Tilson:** I don't want to interrupt. I am simply asking, are you saying Mr Alexander is not present?

**The Chair:** I believe Mike Alexander was on the list, but he may have cancelled. In his place we have Ratna Arya, who is not here.

**Mr Tilson:** Okay, I understand.

*Interruption.*

**The Chair:** Given that we have Mr Arya here as the person who is presenting, I'd rather wait for the person to come and then you could join him, but in his absence we'll continue with the others.

ONTARIO SECONDARY SCHOOL TEACHERS'  
FEDERATION

**The Chair:** Welcome. You have half an hour for your presentation. Leave as much time as you can for questions and answers. Some previous presenters have taken a great deal of time to read their presentations but have left very little time for questions and responses, so I would urge you to do that if you can. Please begin any moment you're ready.

**Mrs Pat Wright:** First of all, I can say how very pleased we are to be here representing the Ontario Secondary School Teachers' Federation. We do apologize for not getting our brief to you earlier so you could had time to look at it. However, we believe that it quite clearly states our position, so it shouldn't give you that much difficulty in quickly looking through it.

We have fought as an organization for the principles of equality since 1919: this year we'll be celebrating our 75th anniversary. While we agree with the concepts and proposals contained in the bill, while we believe that the direction the bill takes is laudable, we see some great problems with the bill as it is presently constituted.

You see, within our organization we represent about 46,000 educational workers, 48% of whom are women. We have to balance the interests of our members with the interests of the students whom we serve. We believe that Bill 79 in fact weakens some of the rights that our members have through their collective agreements and through existing legislation.

We also believe that matters of substance which are presently placed in the regulations should actually be placed in the bill and subsequent act when it is passed. We believe that these clear definitions must be contained within the act. We believe that the specific responsibilities of bargaining agents and employers must be designated in the act and in the regulations and we

believe that section 3 of the regulations must be deleted and necessary changes made throughout.

The three main areas of concern which we have are areas which hinge around the role of the bargaining agent, the rights of individual members and the whole matter of enforcement. What this bill does is that it assigns to bargaining agents a joint responsibility without making any proviso for authority within which to exercise that responsibility.

The bill is silent on the role of bargaining agents, specifically in sections 15, 23, 25, 26, 28, 29 and 31. Bargaining agents are placed in a position of having a responsibility without authority to ensure that the responsibility that they exercise towards their members, both present and future, can be carried out in a manner that will provide appropriate representation.

We also believe that, in giving the bargaining agents joint responsibility with management, the bargaining agents are being placed in a quasi-management role, and that is a flaw.

We believe that within this bill, should bargaining agents and employers have a dispute, there is no resolution mechanism provided with appropriate time lines. Yes, there is something provided in section 27, but it's not time-definite.

Bargaining agents are supposed to work with employers in acquiring information. However, the bargaining agent is excluded from access to raw data which would allow them to make a meaningful interpretation of what that data says. Therefore, they will be unable to fully participate in the development of employment equity plans.

Section 15 allows employers to bypass the bargaining agent completely in their consultation with their employees. Employment equity legislation must provide mechanisms that allow employers and bargaining agents to work together for employment equity in the workplace without compromising the ability of the bargaining agent to represent his members in a manner which is appropriate.

There are settlement mechanisms allowed in section 23 without input from the bargaining agents. This we find unacceptable. The representation of bargaining agents must not be compromised, and when we look at the individual rights and the protections from discrimination, what we find is that the net effect of section 51 of this bill will be to destroy the employment equity sections contained in the Ontario Human Rights Code, and we find that appalling.

Is it the intention to completely destroy those fundamental rights that have been guaranteed to the populace of Ontario? Then after this bill has gone ahead and destroyed these rights, what it does is to accept a minimum standard of reasonableness. This standard of reasonableness is far below that which is found in the

Ontario Human Rights Code, and it's far below that which is acceptable to us.

When we think about seniority rights, which are guaranteed to many of our members through collective bargaining and free agreements between bargaining agents and employers, what we find is that seniority rights could be placed on a barrier list as indicated in paragraph 41(1)5. The employment equity legislation should not and must not override freely negotiated seniority rights if those seniority rights comply with the Human Rights Code. Seniority rights are a standard of the labour movement.

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When we think about enforcement, what we find is that contained within this bill are mechanisms for the establishment of a tribunal, a tribunal which has complete jurisdiction, arbitrary jurisdiction, and is in fact the be-all and end-all of any questions concerning employment equity. The tribunal can rule on those matters which were not even brought before it. We believe that the tribunal should rule only on those matters which are in dispute between the parties.

One of the other concerns that we have about the tribunal is the constitution of the tribunal. The tribunal could be limited to one person. Now, in standard labour relations and in pay equity we tend to have tribunals made up of one neutral party, one representative of the employer and one representative of the bargaining agent. This proposed bill does nothing in that area.

The other concern we have is that the very nature of the tribunal and the matters that can be brought before it would allow a number of different parties to make all sorts of applications to the tribunal. It's going to cost money. The designated groups have waited for a long time for this piece of legislation and they don't have the money necessarily to go before the tribunal. None of the parties, including the government, can afford the enormous costs of the enforcement of this bill. That gives us a problem, because who pays is not spelled out.

The bill contains serious flaws. Employment equity legislation must protect individuals and provide mechanisms to ensure that the human rights guaranteed under the Human Rights Code of Ontario are not eroded. The notion of joint responsibility of bargaining agent and management is one which I believe is unworkable. The traditional role of bargaining agent, as described in Bill 79, has been altered without providing the bargaining agents with mechanisms that will enable them to represent their members appropriately.

The goal of the government, we believe, should be for full employment for its citizens and for an equitable distribution of jobs at different levels and across all sectors of the population. This bill is unworkable and we can only view it as being purely cosmetic.

**The Chair:** We will begin with the third party. Mrs Witmer, there are approximately six minutes per caucus.

**Mrs Witmer:** Thank you very much for your very interesting presentation. You have brought some concerns to the table that have certainly not been voiced by others, and you've obviously done a very thorough examination. You indicate here that you're concerned that individual rights, as guaranteed under the Human Rights Code, are going to be eroded. Could you specifically address those rights?

**Mrs Stephanie Burke:** If I may. You all have your Human Rights Code handy, no doubt. Subsection (5)1 of the Human Rights Code says:

"Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap."

If we look at section 51 of this bill before us, it amends the Human Rights Code in such a way that those rights no longer apply because there's a new subsection now, 34(1), and also in subsection (5) of section 14 of the Human Rights Code, and it makes any employer's employment equity plan a special plan for the disadvantaged, so that anyone seeking employment while those plans were in place would not be able to pursue that because no person's right is infringed under section 5 if it's a plan under section 14, and section 51 of this bill does that.

So, for instance, as I read this legislation I'm very much afraid that sexual orientation is no longer any reason, or family status: A single parent might be told that jobs couldn't be had because this was a special plan under section 14 of the Human Rights Code. What we look at there, then, is that first of all we have only the four designated groups; secondly, whether the employer is making reasonable progress, not the standard of undue hardship but reasonable progress. Basically, we have removed from the Human Rights Code the right to equity in employment.

**Mrs Witmer:** Thank you for that explanation. I think there has been a concern expressed that there is some conflict between the two acts that will create some problems in the future.

You mentioned that the role of the bargaining agent is changed. You've made some very good observations here: the fact that the advocacy role of unions is going to change and be assigned to individual employees and also to third-party advocacy groups. Could you expand on that? Do you want those sections eliminated or do you want them changed, sections 28 and 26?

**Mrs Wright:** While we would not prevent third-party advocacy groups from making their presentations in those areas where they have jurisdiction, one of our problems is that if you have a bargaining agent holding



joint responsibility with an employer, then should that bargaining agent represent a member under the terms of agreements within the constitution of that bargaining agent, the bargaining agent has a right to represent that member in areas of dispute, including human rights, including all different disputes between themselves and employers.

You have a bargaining agent. You've placed that bargaining agent in a position of holding joint responsibility with the employer, and then you say to this bargaining agent, "We're going to allow your member to take you through the tribunal." The problem then becomes, what is the position of the bargaining agent in that regard? Bargaining agents are supposed to represent their members, so how can you represent your member in a situation where you already hold joint responsibility? We see that as a conflict.

**Mrs Witmer:** Do you have any further suggestions as to how it can be changed?

**Mrs Wright:** In, for instance, health and safety, employers and bargaining agents have worked together to establish mechanisms whereby health and safety can be achieved in the particular area. But the bargaining agent does not hold joint responsibility. What then happens with the bargaining agent is that, should a problem arise, should health and safety not be achieved, the bargaining agent could then say to the tribunal or whomever, "This has not been achieved; this is what we need to do," and it is the bargaining agent who has the representation rights for that member who can take it forward—without placing the bargaining agent in a compromising position. That's what I feel this legislation does.

**Mrs Witmer:** Thank you very much. I did appreciate your presentation.

**The Chair:** Sorry, Mr Tilson; we'll go over time if you ask another question.

**Ms Carter:** Welcome. I was a one-time member of the OSSTF, so I have some feeling with you. I'd like to discuss the question of seniority, which evidently you favour very strongly. First of all, there's a possibility that seniority provisions might conflict with employment equity. That has been suggested to us, and I just wondered what your thoughts would be on that.

**Mrs Wright:** First of all, we do not see seniority rights necessarily as being conflicting with employment equity. I know that's different from presentations you may have had. What we see is that legislation of this type should smash systemic discrimination. Once systemic discrimination has been smashed and the barriers have been removed, then you have freely negotiated seniority provisions that are in collective agreements that should be allowed to work, because seniority provisions are actually gender-neutral and race-neutral and disability-neutral. Anybody in the job who

can do the work and has got the seniority and has fulfilled the other requirements can progress.

We do not see seniority provisions as necessarily interfering with the employment equity provisions, but first the legislation must smash systemic discrimination; after that, once people are employed, are in the system, then they can move forward.

**Ms Carter:** So it's only possibly in the early stages while we're approximating to equity in the workplace that there could be a conflict. But supposing there were a conflict and the seniority provisions caused a breach of the Human Rights Code; we might be faced with a complex and slow means of resolving this. Some groups have suggested having a board of inquiry to determine whether seniority provisions do constitute such a breach. I just wondered if you could suggest any easier and faster way of dealing with this than just leaving it to the individual to file a complaint.

1550

**Mrs Burke:** We see the goal of employment equity legislation as getting rid of systemic discrimination. From the time we made our very first input to the commissioner, we said it is essential that we separate the path for equity for the individual from the path which destroys systemic discrimination, because we believe that the Human Rights Code is the correct place to have complaints brought forward by individuals. We suggested even then that this whole thing be made much less expensive and much more expeditious, and that it be kept out of employment equity legislation.

What we find instead is that it's been removed from the Human Rights Code and shoved into the employment equity draft legislation. The result of that is going to be that in the attempt to get rid of systemic discrimination, the system will be clogged with thousands of cases of individuals. You cannot do both, getting rid of systemic discrimination and protecting the rights of the individual, under the same process.

**The Chair:** One final question.

**Ms Akande:** I'm interested in your response. You believe that seniority should be taken into account when addressing promotion. Recognizing that in education promotion is very much hiring for a different level, very much a job application and interview process, not just a natural process of promotion, could you please describe to me in a little more detail exactly what you mean by "taken into account"?

**Mrs Wright:** One of the things that I know employers, that is, in this particular case, boards of education, have been doing with the bargaining agents is that they have been working on committees to look at promotion mechanisms, from classroom teacher, for instance, to department head, from department head to principal.

One of the reasons we said "a consideration for

promotion"—because a lot of things are represented in that whole mix, in agreements that have been worked out between bargaining agents and employers when we sit on the joint committees—is that we look at a whole bunch of things, not just promotion. One has to look at qualifications, one has to look at areas of expertise, one has to look at the particular needs of the system, one has to look at the seniority provisions within that context. You cannot just look at seniority, purely and simply seniority, for the purposes of promotion within education. One has to look at seniority as part and parcel of a whole group of things, which bargaining agents and employers can work out in the educational sphere.

In addition to that, we have other units we represent who are non-teachers, and the seniority provisions are more critical for them. I think Stephanie would like to say a few words too.

**Mrs Burke:** It's a standard provision in non-teacher agreements in our sector that all other things being equal, the senior applicant gets the job, and that is the type of thing we are not keen on losing without having studied this a great deal more. The seniority matter is not such a critical issue for promotion for teachers, but it is a critical issue within the non-teaching units.

**The Chair:** We've run out of time. Mr Callahan.

**Mr Callahan:** I want to applaud you for this brief; I think it's excellent. I notice that you appeared before the Employment Equity Commissioner in February 1992. Unfortunately, I don't think he or she, whoever it was, listened to one word you were saying, but I think they should have.

I've had a fear right from the start of this legislation, although I totally abhor discrimination of any type, particularly in the workplace, that they talked about it in terms of legislation almost building a duplicate tier to the Human Rights Code, rather than looking at it, as you've said and as has always been my belief and my colleagues' belief, that the Human Rights Commission, if it were properly funded and the procedures were set up in such a way that people would get prompt justice—because the old adage is "Justice delayed is justice denied"—then you wouldn't need this parallel system to do it other than to deal with systemic discrimination.

I think you're right on, and if this government were smart it would listen to you. I've said before that I think this is going to be a lawyers' delight, that this is going to create work for lawyers that will keep them in business for a long time. I can see people scooting back and forth between the tribunal and perhaps the Human Rights Commission or vice versa and thinking they are getting some sort of fairness; in fact, all they're going to be doing is paying the high price of those lawyers and perhaps reaching retirement before they get some justice. So I applaud you for your suggestions in that regard.

We've also heard from some groups that the number of regulations in this bill is absolutely astounding. It seems as though the cabinet of whatever government is in power can change the whole set of circumstances, that people think they're protected and it's safe—I don't mean to make light of this—to go back into the ocean, but it can be changed on them immediately by just an executive order of cabinet.

That's frightening. I'm a lawyer by profession, and I can remember that back in law school they said that any legislation, to be clear and enforceable, should not be regulations but should in fact be legislation that has to go through the House to be changed so the free and democratic process is fully working, and that regulations should be used just to cover the things that perhaps are day to day or irregularities. You didn't put that in your brief, but I gather that would be supportable as well, would it?

**Mrs Wright:** I think we did make the comment that substantive matters from the regulations should be placed in the legislation. For instance, we note that within the regulations is the definition of "aboriginal." Within the legislation, there's no definition for "aboriginals," "racial minority" or "disabled person." The definitions aren't in Bill 79. We noted, for instance, that there are substantive sections in part III of the regulations which we think would be better placed in the bill; that the qualitative measures contained within the regulations should be more correctly placed in the bill; that the sections contained in 40(1) and 40(2) about information re posting in the workplace should be more correctly placed in the legislation.

**Mr Callahan:** As opposed to regulations.

**Mrs Wright:** As opposed to regulations. We believe that what has happened is that we have a very unwieldy set of regulations which are full of substantive matters which would be better placed in the bill. In terms of our presentation in February 1992, I was not yet elected to the provincial office of OSSTF so I will defer to Stephanie, who made the presentation at that time.

**Mr Callahan:** They should have listened to you. I think the comments you make—

**The Chair:** I think she's going to respond to that.

**Mrs Burke:** No, I was not going to respond.

**Mr Callahan:** Another thing that struck me when this bill was in the mill was that if you're in favour of something, you're obviously against something else. By doing what you've suggested, by strengthening the operation of the Human Rights Code, as you indicated, I think, you are advancing all of those causes that are in the Human Rights Code and you can't be accused, whether it be correct or not, that you're favouring one group over another, because you're in fact giving all of those rights that are encompassed in section 5 of the Human Rights Code their due and their opportunity to



be heard. I think that's very important, at least from where I'm sitting.

The other thing, and then I'm going to defer—

**The Chair:** There won't be time for that afterwards.

**Mr Callahan:** Then I'll defer to my colleague right now. You can ask your question.

**Mr Curling:** Is the time up?

**The Chair:** No. There would not be time to pass it on, but there is time for one.

**Mr Curling:** Just a quick one then. I wasn't in for all your presentation, but you spoke about the seniority rights in regard to tenure in the system for teachers. Do you think that tenure would conflict with the principles of employment equity?

1600

**Mrs Wright:** One of the problems one faces in education is that before somebody can become employed in education, there's a whole bunch of hoops that they have to go through, namely, they have to get out of school, graduate, get into university, graduate, get into teachers' college, graduate, and then get employed.

One of the problems, and I think this is a problem that the Minister of Education will have to grapple with after employment equity legislation has been passed, is how to ensure equity within the educational sector so that we can provide for our visible minority students, and in fact for all students, suitable role models so that we have a sufficient distribution of role models throughout the education system so that students of all types, of all origins and of all backgrounds can have access to teachers who cross the entire spectrum that we have in Ontario. That is a problem, and that is a problem which specific employment equity cannot address in legislation as such. It is something specific that I think the Minister of Education will have to address.

**The Chair:** I want to thank both of you for your presentation and your participation here today.

RATNA ARYA  
HELENE AND MAIR SARAGA

**The Chair:** Mr Arya? I want to welcome you to this committee. You have half an hour for the presentation. Would you please introduce your colleagues?

**Mrs Helene Saraga:** Helene Saraga.

**Mr Mair Saraga:** Mair Saraga.

**Mr Ratna Arya:** First of all, let me thank you, Mrs Witmer, and this entire committee for the opportunity that you have given me to make my presentation this afternoon, and thereto with the speed with which you have made this possible. It was only yesterday afternoon that I made my request that I be given this opportunity to make a presentation and it is very heartening that here I am right in front of you.

**Ms Harrington:** On a point of order, Mr Chair: Are these presenters on our agenda?

**The Chair:** Yes, they are. If you recall, what happens is that when people cancel we go through the waiting list, and that is why Mr Arya got short notice for coming. So he's on our list, but not on the one you have seen. The person who was on the list, Mr Alexander, has cancelled out. We then go through the waiting list, and Mr Arya was available to come, so he's legitimately here as part of the waiting list.

**Mr Mills:** We just wanted to know what group he was with.

**Mr Arya:** I'm just an individual, and passionately interested in the administration of justice in this province.

Let me also apologize for being late. I got held up in the traffic jam on Highway 401.

If I had had more time, I would have liked to further chisel and polish my presentation, but what seemed more important to me when the opportunity was offered to me was that I be here and break the silence of years rather than wait and wait, as I have done in the past. If, therefore, you discover any deficiencies in my presentation that could have been rectified by revisions of drafts, please bear with me and also pardon me.

Dear Chair and other members, the Canadian Charter of Rights and Freedoms guaranteed that every citizen of Canada has the right not to be subjected to any cruel and unusual treatment or punishment, to be presumed innocent until proven guilty according to the law in a fair and public hearing by an independent and impartial tribunal, to be deemed equal before and under the laws and the right to the equal protection and equal benefit of the law without discrimination, and in particular without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. I'm sure you have heard this over and over and are already familiar with all this.

Once upon a time, and that was prior to 1978, I used to look upon Canada as a model for our entire global village in which each and every person maintained his or her own ethnocultural and other identities and yet each was encouraged to make his or her exceptional contribution to the wellbeing of self and of others. The concept of multiculturalism to me was a panacea for our entire world, torn apart by the barriers of race, religion, colour of skin, language, accent, gender and culture. The Canadian Charter of Rights and Freedoms to me was the ultimate statement of all humanity's struggle for beauty and harmony in our interpersonal relationships, not only in the workplace but also in the conduct of our everyday life at home with our families and with the world at large. Everything about Canada had the aura of the tender, loving care of lovers who had fallen in love for the first time.

My wife, Uma, and I, together with our 39-day-old son, Akfhaya, arrived in Canada on 3 September 1962.

I had a master's degree in English, from India, of course, and I had a bachelor's degree in teaching. In the manner of a typical first-generation immigrant, it was not just the spirit of adventure but also the ambition to make a new beginning in a brand-new country that had brought us to this land of opportunity. It was magic to have arrived here, and that magic has still not disappeared from our minds in spite of the ordeal that has brought me face to face with this committee this afternoon.

The theme of my presentation before you this afternoon is that our democratic institutions remain hostage to an institutionalized bigotry and stereotyping based on race, national or ethnic origin and so forth that have been mentioned in the charter, in spite of the charter and other legislations that have been enacted to root this evil out.

In the brief space that I had for preparation, and in the brief space that I was here, I heard over and over again the echoes of, what is important for the administration of justice is a mechanism for conformity with the law.

Mechanisms for conformity cannot be obtained so long as individuals in charge of these mechanisms do not have a commitment to them. Justice is delivered not only by laws but also by personalities who are supposed to carry out the mandate of the legislators and of the mechanisms.

Therefore, what I'm going to indicate to you this afternoon is that fully entrenched in the administration of justice in the form of due process is a system of hierarchical equality, as a consequence of which those in higher positions of responsibility are deemed to be more equal in the conduct of due process than those in subordinate positions.

What I'm going to do next is, with reference to my own experience, explain what exactly the nature of this hierarchical equality is in our system.

I was the head of the English department of Warton District High School from September 1969 to June 1987. I have reason to believe that as far back as 1978, when Doug Nickel, who had been my principal from 1969 to 1978, retired and Paul Cole was appointed principal of that school, the institution of stereotyping had determined that, being non-white, I did not have the right image for my position.

**1610**

Paul Cole attempted to employ several different kinds of tactics to force me to quit. I stood my ground. He backed away. When Paul Cole transferred to another school in 1980, I expected that my chapter with Paul Cole had closed.

A year later, Paul Cole was elevated to the position of superintendent of personnel in the system. On December 9, 1982, I had an inkling that all was not still

well with my professional career.

On June 7, 1983, an education officer of the Ministry of Education, Earl Knickerbocker, having visited my classes, having checked the notebooks of my students, having reviewed my program, having talked to my students, exclaimed, "You might be the best English teacher in the province." Obviously, what he also indicated to me was that I had the potential of making a unique contribution, not only to the cause of teaching English but also to the entire educational system, because of the strategies I had developed to make my program a student-centred learning system based on individualized critical thinking.

This official was so impressed with my program that he, first of all, suggested to me that I prepare to make presentations, to address conferences and so forth.

Then he didn't stop there. He was so impressed that he decided to take this evidence to my principal. He helped me, and both of us carried some of the notebooks that I, at his instructions, collected from each of my three classes that I taught during that semester to the principal's office.

But 15 or 20 minutes later, when this official came out of the principal's office, no doubt was left in my mind that there remains the weighting of our system of administration of justice, even after a definite identification is made, that the weight has some species of merit to recommend it to the system. That was June 1983.

On January 25, 1984, after my principal, this new principal, visited all three of my classes that I had taught during this new semester, I received a report on my teaching competence that started out with the sentence, "Planning and preparation are seriously flawed."

One of the statements used in support of this above assertion was that I had spent six weeks on the teaching of Shakespeare in each of my three classes, thereby leaving insufficient time for the coverage of other units of the course.

That premeditation with malicious intent had been the presiding deity of this report is established by the fact that it had been my practice to spend the first six weeks on the teaching of Shakespeare in each of my classes, but only in the semester prior to this one, and I used Shakespeare as the core of my program. But because of certain new perceptions, I had changed my program, and in this semester I had spent only 3, 8 and 13 class periods respectively in each of those three classes under review.

When I confronted my principal with the evidence of the above, he offered to revise the report.

Since I had identified not Mr Koshan, the present principal, but Mr Cole as the real author of the report, I had every intention of accepting a proper report if one acceptable to me was written, but only after putting



enough fear of the law into Mr Koshan's mind to make sure that he would not dare do something similar to this again with me or with any other colleague of mine. But enough falsehoods were retained in the revised report that I refused to accept the same. He asked me to return the original report because this new report was better than the other, but upon counsel from a grievance officer of the district OSSTF, I declined to do so.

This was the point at which the hierarchical system of equality took over from the specifics of my case. Obstacles were created in my pursuit of excellence by recommendations made that went contrary to the ministry's guideline. The choice that was given to me was to be condemned either by the ministry for not following the ministry's guidelines or to be condemned by the principal for not following his directives.

My students were exploited and manipulated, not only to my detriment but also to the detriment of their pursuit of learning in my classroom.

**Mr Callahan:** On a point of order, Mr Chair.

**The Chair:** Excuse me, sir.

**Mr Callahan:** I have a concern. It may be an unfounded concern, but I'm hearing things that—perhaps we should have just a moment in camera and I'll tell you my reasons for raising the point of order. Perhaps we could just have the Hansard turned off and the cameras turned off.

**The Chair:** Can we quickly arrange that?

*The committee continued in closed session from 1616 to 1619.*

**The Chair:** As a brief explanation, we went into camera very briefly to simply assure ourselves that whatever he's saying in public was something that he felt comfortable in doing and communicating that concern to him, and if there were, he, in knowing that, was prepared to proceed in whatever way he needed to. So Mr Arya, I apologize. Please continue.

**Mr Arya:** I apologize too for the concerns that I raised as a result. But I am absolutely confident that what I have to present should be of interest to this committee.

On December 3, 1986, I was put under review as department head because I had been unable to put courses of study on file. Included in the report I received on December 3 was a statement that Earl Knickerbocker of the Ministry of Education had assisted me with my program and with my courses of study on three occasions. I have yet to be provided the dates of the reported visits, even though I have requested them over and over again. I requested Mr Beamer, the superintendent, to have Mr Koshan, the principal, provide me the dates of those three visits. Mr Beamer, the superintendent, told me he did not want to get involved in this matter because that was a matter between the principal and me. I just cannot understand

what the function of the superintendent is in our system if not to assist in this kind of professional difficulty.

I would also like to have obtained the circumstances that required Mr Knickerbocker's intervention for assistance and also the details of the assistance. But I did not even get to first base, so the other concerns of mine were never addressed.

Premeditation of malicious intent is contained in the fact that one of the components mandated for me for my courses of study was that I was supposed to prepare, not only for me but also for the other members of my department, daily lesson topics. I am sure some of you are educators or have been educators and some of you have been involved in the system of education in one capacity or another. Apart from questions relating to the educational validity of daily lesson topics, please note that I was supposed to come up with the daily lesson topics, and I have a letter to that effect, whether or not other members of my department gave me any input into those courses of study. I am not God. I had to come up with courses of study that were relevant to each and every member individually.

On April 30, 1987, I had a so-called review meeting at the board office. I had gone to this meeting, in spite of the fact that the OSSTF field secretary who had been assigned to represent me could not be present for that meeting because he had to go somewhere else, because I had faith, trust and confidence in the system. The purpose of this review meeting was the difficulty that I had in coming up with those courses of study. But as I started to indicate why I had difficulty in putting the courses of study on file, the director of education stopped me by saying—and the concern was similar to the one just expressed—that if I had allegations to make, I must be accompanied by a lawyer.

Twelve days later, the director invited me to explain to him why I should not be demoted. If I had wanted to make a presentation, I had only three days to do so. The OSSTF field secretary assigned to assist me advised me not to do so on the grounds that the federation had been fighting my case on the grounds of faulty process.

When I suggested that I would even consider making a presentation to the board of education, this representative advised me not to do so because the meeting at the board office would be a "kangaroo court". Since I had already had a taste of a kangaroo court on April 30, I had no choice but to take this recommendation seriously.

**The Chair:** Mr Arya, I'm sorry to interrupt you again, but we only have five minutes for your presentation, so you may want to reflect what you want to say in those five minutes.

**Mr Arya:** Okay. I wish I had more time, but anyway.

I think in essence all I wanted to present to you—

with reference to the rest of my story, because I had evidence of manipulation of my students. I took that to the director's office. The director made certain statements to the effect—number one, the innocence of children must be preserved; that if I brought to him a case of professional misconduct, even on the day of arbitration—and my case was before arbitration by this time—that he would not hesitate to take serious action against that employee. Nobody else lost a job; I did.

First of all, what I would like to do is, if I had more time, to indicate to you the stratagems and the terror tactics that are used by those in higher positions of responsibility to the detriment of the subordinate. My feeling remains that it is a curse to be a subordinate in our system of administration of justice.

Those in higher positions of responsibility, because of their superior powers, are able to determine what goes on record and what doesn't, in view of the fact that those in higher positions of responsibility not only have the power to create the record but also are the keepers of the record. This gives them the power to give no dignity to the case of their victim by manufacturing evidence behind closed doors, as I have indicated, in support of their own case and to the detriment of the victim, and the falsehoods remain the unchallenged record, let alone their wanting to dignify the concerns expressed by the victim with a response.

Secondly, even as the victim starts to feel a sense of security owing to the fact that it has recourse to the guarantees contained in the delineation of professional standards and practices and so forth, what happens is that they have the ability to collude with those in higher positions and thereby turn the guardians of the professional standards and practices into adversaries of the system. The victim may next attempt to seek succour and support from the checks and balances of our system, as incorporated, and I have already indicated to you what happens to him.

Since the application of the checks and balances of our system of justice is hostage to the divine rights of those in higher positions of responsibility, those in higher positions of responsibility keep coming to the aid of the perpetrators by elevating them to the position of the judge, jury and the executioner in a diabolical plot, as it were, to create the revolving doors so designed as to lead the victim from one blind alley to another in an attempt to shatter the sense of security that the victim may have derived from the justice system.

If the above is not a description of violation of each and every one of the guarantees contained in the charter, what else is? If you have a passionate interest in ensuring that our constitutional, civil and professional rights are not just decoration pieces, the sole purpose of which is to be framed and hung in the glorified offices of those in positions of responsibility, as you were suggesting, sir, that the legislation should be clear and

enforceable, is it too much to expect that you will not allow an Ontarian such as me knowingly to be disciplined without a just cause and be denied access to the due process by the so-called custodians of checks and balances and so forth?

If this committee has the courage, honour, integrity and willingness, appoint a judge of the Supreme Court of Ontario to conduct a judicial inquiry into this case and a couple of others that I'm going to mention, and if you are genuinely interested in securing justice for all Ontarians, make your unique contribution to all humanity's collective struggle for beauty and harmony in the realm of interpersonal relationships in the workplace by making violators face the questions relating to their accountability for their prejudiced crimes of omission and commission and for their betrayal of faith and public trust. Earn the gratitude of countless victims who have had to abandon their struggle for justice for one reason or another and restore the faith of these victims in the justice system so shattered in their respective cases as to make them feel cursed and condemned to an inferior status in their own eyes and the eyes of others for the rest of their lives.

1630

**The Chair:** Mr Arya—

**Mr Arya:** In closing—

**The Chair:** I wanted to give you the time. I know Ms Mair wanted to make a comment, and I wanted to leave time for that comment to be made.

**Mr Arya:** I will take not more than one more minute.

**The Chair:** Okay. I wanted you to sum up your thoughts as well.

**Mr Arya:** Okay. I can assure you that the details of stratagems rehearsed behind closed doors singly and in collusion with others will be found blatant even by the most sceptical of the members here. It will take your breath away in disbelief. But obviously I can't go any further in this. If you have interest, please give me the opportunity, and if you have interest, then I think I deserve what I have just suggested: a judicial review of this case and others. Otherwise, in what ways would the conduct of this committee be different from the conduct of the stout men in *Heart of Darkness* who had torn down to the river and had gone back to extinguish a fire in a hut, and then Marlow, the protagonist, noticed that the pan that he had carried had a hole in its bottom?

Thank you very much.

**The Chair:** Ms Mair?

**Mrs Saraga:** My name is Helene; this is Mair. We are husband and wife. My husband speaks four languages, but English is his fifth and he has asked me to make my brief presentation to you.

The fact is that we are all teachers or former teachers who have been victims of abuse of process and power



by certain individuals who run school boards. I'm not going to make a case for this issue, but in section 28 of this particular bill, I would like to stress that mainly we want to say that we hope this tribunal will give a forum for individuals and that the employer and bargaining agent must carry out their joint responsibilities in good faith.

If a teacher is brought to a hearing at a school board and his contract is terminated, he must, as I understand—I'm not a lawyer, but is it not natural justice to give an adequate, full and fair hearing to an individual? This was not done to this man, my husband, yet the Wellington school board in Guelph—Mr Fletcher, you're aware. A union must support a member in good standing, hopefully. If management threats are ignored by the school board, is the union not supposed to support the member? What is good faith? What is acting in good faith? Abuse of power and process can destroy, can sabotage a career. Mr Arya is an example and Mr Saraga is an example.

I was a teacher at the Wellington school board by accident after my husband was fired. It's a long story that I will not go into but, Mr Chairman, members of this committee, please, this bill must enforce what you are presenting here: that they are not just nice things on paper, that they are enforced, that when a victim comes to a tribunal, there will be some means of making sure that people are accountable—in school boards in our case—in respect to employees, that they must follow rules and have empathy and humanity for individuals and not look at who they are, what their background is, if they come from Morocco, India or whatever. I think that is the bottom line of this committee, and we hope that this document will be enforced. I believe that's what we have to say.

**The Chair:** Thank you very much. Mr Callahan.

**Mr Callahan:** I just want to clarify something so this gentleman doesn't go away without that. The gentleman asked us for a judicial—

**The Chair:** I was going to comment on that, to say that we have no authority—

**Mr Callahan:** I didn't want to leave him feeling that we could do that.

**The Chair:** I do want to say that we don't have, as a committee, the authority to do a judicial review of your personal story.

**Mr Arya:** I seek the guidance of this committee as to how to go about things, because what is important is that unless there is a mechanism in place, there is no point in holding hearings.

**The Chair:** Mr Arya, I wanted to say that we don't have that kind of judicial authority.

**Mr Arya:** I do understand that.

**The Chair:** I do want to say to all three of you that we appreciate hearing your personal stories and appreci-

ate the difficulties that you have faced. Your stories are in Hansard. I might suggest that you go to your local MPPs, in fact, to direct you to the appropriate place for dealing with this matter, but beyond that, I don't think we can do much more as a committee.

**Mr Arya:** I just want to add one last remark with reference to the incident that I cited from Heart of Darkness and what was said towards the end as this stout man with the moustache tore down to the river and so forth, and he said everybody behaved splendidly, splendidly. Thank you very much.

**The Chair:** Thank you, sir. Thank you for coming.

**Mr Arya:** You're welcome.

**M. Saraga :** Est-ce que je peux dire un mot ? Vous parlez français ?

**The Chair:** Oui, mais on n'a pas—

**M. Saraga :** Il y a juste une citation ici que je voudrais bien—

**Mrs Saraga:** He just wants to read a brief, one-line sentence.

**M. Saraga :** On juge une société à l'effort qu'elle fait pour son système éducatif et juridique. C'est ce qu'a dit Albert Jacquard. C'est un grand philosophe français.

**Mrs Saraga:** A great philosopher.

**M. Saraga :** Je pense que la plupart des gens qui connaissent ce philosophe savent qu'il ne parle pas à travers son chapeau parce que c'est la vérité. On ne respecte plus les droits des individus dans ce pays-là. On traite les gens comme des ordures et alors on oublie le principe judéo-chrétien, on oublie la religion, on mêle la politique avec l'éducation. On dit: «La politique, c'est la discorde. L'éducation, c'est l'harmonie.» C'est la vérité.

On ne respecte plus les droits ; c'est pour ça qu'il y a des massacres. Pourquoi ? Pourquoi ça ? Parce que l'individu ne cherche pas à comprendre, à établir une harmonie avec l'autre personne et dire, «Je veux écouter ce que l'autre personne a à me dire,» et ensuite je fais ma conclusion, mais si on vous saute dessus avec un revolver et on vous tire dessus et après vous dites, «Okay ; je suis innocent,» hélas.

**The Chair:** J'apprécie les difficultés, mais ce n'est pas l'endroit pour résoudre ces types de problèmes. Mais nous avons entendu les histoires, votre histoire et l'histoire de M. Arya, et je vous remercie d'être ici et de parler avec nous de ces problèmes que vous avez cités. But we have to end. I'm sorry, we've heard it—

**M. Saraga :** Nous voulions seulement—

**Mrs Saraga:** We just wanted to present—

**M. Saraga :** Il y a une personne ici qui s'est sauvée — elle n'est pas là — et nous voulions que cette personne sache—

**The Chair:** Ça va. Il le sait.

**M. Saraga :** —qu'on n'a pas le droit de traiter les gens comme ça. Voilà. On est au XXI<sup>e</sup> siècle ; on n'est pas—

**The Chair:** Merci, monsieur.

**Mr Arya:** Thank you all from the bottom of my heart for this opportunity.

1640

NICOLE CONSTANT

**The Chair:** I call Nicole Constant to present. I want to simply and briefly indicate that she's not here on behalf of Black Creek Anti-Drug Focus Coalition Family Support, but rather as an individual to present her own thoughts on this matter. We have approximately half an hour for your presentation. Please begin any time you're ready.

**Ms Nicole Constant:** Mr Chair, members of the committee, ladies and gentlemen, my name is Nicole Constant. I am pleased to have an opportunity to comment on Bill 79. As a black woman, I belong to two of the designated groups, and I cannot be employed in my profession in Ontario.

Before coming to Canada in 1980, I was employed for eight years as a medical doctor in Europe. I worked as a resident physician in major hospitals of Spain and France. I was a general practitioner and had begun studies for specialization in endocrinology.

When I joined my mother in Canada, I expected, as immigrations officials told me to expect, that I would continue the same type of employment here. Naturally, there would be some examination, and of course I would need to repeat all or part of an internship that is necessary, for each country standardizes its procedures in different ways.

The Ontario College of Physicians and Surgeons gave approval to my academic qualifications, which authorized me to sit for its examination. Bear in mind that the exams are not open to everybody; my credentials were assessed first. I proceeded with the first of the two rounds of examinations. As I will explain later, I regard these exams as biased. Then I learned that I would never be licensed as a medical doctor in Canada.

To be licensed, one must first be employed as an intern in a teaching hospital. At the time I was seeking such employment, hundreds of qualified foreign doctors were wait-listed, but only a handful, less than 20 per year, were granted this employment. In medicine, you cannot separate employment and certification. The two processes work together to create systemic inequity in the profession.

If you want to do your job right, you must give some attention to systemic inequities in employment which relate to systemic inequities in licensing. The problem is not limited to a few hundred doctors. Employers are often required by law to hire licensed or certified professionals. This is the case in medicine, in teaching,

in engineering, accounting and so on. No law, no quota and no kindness of heart will give you equitable employment in these areas if you do not get rid of systemic racism in the certification processes. At the same time, as you can see in my case, certification depends on employment. By separating employment from certification, you perpetuate a catch-22.

By telling you more about my own case, I think I can also show you how you can extend the present bill to solve some of the problems.

My European licence was good for the entire common market. When I went from Spain to France, I did not need to repeat my examinations nor my entire two years of internship, but I did have to repeat one year of the internship. I am mentioning this to point out to you that requirements could be more precisely adapted to specific conditions than they are in Ontario.

I recommend that you institute the same statistical measures for certifying and licensing bodies which you propose for employers. I recommend that you require these bodies, just as you will employers, to file plans which remedy demographic bias unfavourable to the designated groups. I recommend that you incorporate into Bill 79 the recommendation of the Task Force on Access to Professions and Trades. If you do that, you will empower the Lieutenant Governor to issue licences where evidence of individual qualification and evidence of demographic bias combine to warrant such an action, just as you now propose to empower the Lieutenant Governor to impose plans on employers. If you put the entire onus of the reforms we need on employers alone, ignoring certification processes, our legislation will not achieve its objective. You must attend to both sides of the problem. Sauce for the goose is sauce for the gander.

The office for access to profession and trades was created by order of the government last December. It has a mandate to talk with licensing and certifying bodies, just to talk. There's no supporting legislation for action. Also, medicine is not included. Everybody can find excuse to wait for the other guy. We need a remedy, not a strategy. Recognize the connection of certification and employment in your file.

I myself have also run into parallel barriers linking employment and certification outside of medicine. I spent a good deal of time and a great part of my savings pursuing a medical licence in Canada before I learned that the road was blocked. It did not take long before I was nearly trapped in a spiral of welfare dependency. Fortunately, I worked in a number of community volunteer organizations in my Toronto neighbourhood, Jane and Finch, which bolstered my morale.

I also lobbied the Ontario College of Naturopathic Medicine to open a special stream for foreign MDs and, with the assistance of OSAP, entered its two-year program. I am a registered naturopath. Unfortunately,



few people in my own South American, Caribbean or African communities can afford that service. My small practice is supplemented by employment in social work. I work for the Black Creek Anti-Drug Focus Coalition and, on subcontract, with black students and parents at C.W. Jefferys Collegiate Institute. I think any of the vice-principals who call on me continually will tell you that my work is extremely effective, but of course all this employment is poorly paid and without security.

What can the principals do? The schools participate in the same double binds as the hospitals. My counselling work with students and parents is effective because I have a decade of professional experience with patients. However, in Ontario, being well qualified is not the same as being well certified. Employment in the school cannot be equitable, because licensing ties it up. Therefore, if you want your legislation to produce equitable employment, you'd better not disregard the bias against experienced immigrants in the certification process.

Although my present work offers many gratifications, I cannot deny my bitterness about the barriers to professional standing. Recently, for two years I served as a co-chairperson of the committee which organized the Jane-Finch Community Health Centre. When the centre was inaugurated, the board wanted to employ me. Despite their efforts to find a way, they could not. OHIP cannot employ people except according to their category of licence.

I know it will not be easy for you to deal with the issue of certification, because the groups which control certification claim the authority of expertise. They always claim to be protecting standards. You must keep your heads and not be afraid. Nobody has a monopoly on standards.

Certainly, the examinations ought to be revised. They are biased towards new graduates, which means, unfortunately, a population demographically unfavourable to racial minorities. The bias arises because the exams are rather in the style of the Canadian board game Trivial Pursuit. If you were to give these examinations to the average 45-year-old licensed MD practising in Ontario, I think you would make him quite uncomfortable. Why give that to the foreign graduates? They have little to do with professional experience and a great deal to do with cramming. The present exams are a barrier to candidates who are not well off economically because of their arbitrary demands for preparation.

One remedy I think legislation should be amended to encourage is the following: An employer—for example, a hospital—should be able to provide a conditional offer of employment to a person such as myself. Assuming that I then pass appropriate preliminary exams, the hospital should be able to ensure that there is an internship position available. With such a mechanism, employment equity in my profession would be achieved

much more quickly. The present system is not only weeding out minorities; it is weeding out new ideas and new perspectives.

**1650**

Although there has been some talk of an oversupply of doctors in Toronto, I do believe that I, as a black woman, a female medical graduate who could work in French, Spanish and Creole, would make a valuable contribution. I wish I could do so.

I resent being unable to earn a salary which is not more appropriately related to my education. Even more, I regret not being able to make a fuller professional contribution to society and to offer stronger public leadership on behalf of the designated groups to which I belong.

The legislation as proposed would not tackle the problems I've pointed out, but it could, with a few changes. I would hope you can tackle this problem. Your legislation will not relieve the designated groups of their second-class standing in employment. You will fail to assist them in the basic area of self-esteem and self-image. Therefore, I urge you to go all the way. Thank you.

**The Chair:** We have five minutes per caucus.

**Mr Curling:** Thank you very much, Ms Constant, for your presentation. You've made some very valuable points here, because as you said, it seems to me that the immigration laws of recruiting are inconsistent with the practices of the country itself, as it recruits trained and skilled people from abroad, bringing them in here, with those skills, to say: "Welcome to Canada. Because of your professions, you're able to be employed according to the needs, sometimes, of the country." That's the only way they recruit, if there is a shortage of certain sorts of professions. So I'm sure that to migrate to Canada and the acceptance of the country was based on your qualifications.

I fully agree that they have emphasized to the government here over and over that the Task Force on Access to Professions and Trades has recognized these inequities within the system and addressed them with very strong recommendations. I thought that when you mentioned—the part that I really like is to say where those professional organizations are supposed to be able to present too to the Employment Equity Commission an employment equity plan. I thought it was rather interesting, something that I will try to pursue.

Did I understand you correctly when you say, for instance, that the medical association or the engineering association, as they recognize engineers or doctors, or all the professional associations, should show some employment equity plan of how they are having the acceptance of those designated groups within the Employment Equity Commission? Am I hearing you right when I interpret it that way?

**Ms Constant:** Yes.

**Mr Callahan:** I have to tell you that this is a problem that has just recently been exacerbated, to some degree, by Canadians who are receiving their medical training outside of Canada being cut off from the ability to be able to bill OHIP without sunseting them, as it were, and sort of working into it and saying any more who go to foreign medical schools won't be able to bill OHIP. They just cut them off completely. A similar thing occurred with the question of internship, as I understand it, and I don't understand the rationale for it being a \$30,000 cost to a hospital, but apparently it is.

These impediments are systemic. They in fact deny you the opportunity or have denied you the opportunity. They've also denied a number of other people who had credentials from outside of Canada and also Canadians who were born here who had been educated in medical schools in, say, Ireland or whatever, because they couldn't get into the medical schools here. They were in the same position. Some of them had to travel to the United States and intern in United States hospitals and then return to Canada in order to be able to qualify and meet those tests.

I agree with you that there should be some other method of doing it, because by having these systemic barriers we are perhaps turning away or not allowing qualified medical people or, if it occurs in other fields, qualified people in those fields too, to be able to contribute to what we need here in Canada. So there's no question that it's a problem that I think governments have left on the back burner too long and they should get busy trying to rectify the inequities that arise out of those problems.

**The Chair:** This is a statement.

**Mr Callahan:** Yes.

**Mrs Witmer:** Thank you very much for your presentation. You've certainly drawn to our attention, once again, a problem that is shared by individuals throughout the province. I know I have a large group in my own community whom I meet with on a regular basis who are being denied the opportunity to make the contribution that they're capable of making. Many of them are medical doctors and others are people who have been trained in other professions.

I've been communicating with the government, I've been communicating with the professions and I have to tell you, we have constantly come up against a door that seems to be closed in our face. I'm not convinced, however, that this legislation that is before us is going to help the particular situation that individuals such as yourself and the people in my community face.

What do you feel needs to happen in order to ensure that you do gain access and that your skills are used to their fullest potential in the same way that other people have access?

**Ms Constant:** The licence. The problem is the licence. You have to have the right to get that licence equivalent.

**Mrs Witmer:** That's right.

**Ms Constant:** But the thing is, they are saying they don't need medical doctors and this and that. After the news on the French channel—not 60 Minutes—

**Interjection:** Radio-Canada.

**Ms Constant:** Yes, Radio-Canada at night-time. You know, after the news they—

**Interjection:** Le Point.

**Ms Constant:** Le Point. One month or a month and a half ago, they reported there is a new group of people, in Saskatchewan I think, who are making come medical grads, foreign graduates from South Africa to work here. Why don't you use the people who are here instead of going to South Africa to bring people up here? It's not really that they don't need. I was believing that before until I saw that on the French TV in the month of July, and they did two nights presentations with it. People come out and talk. A woman has started an agency in the basement and now she's got a big agency outside, you know, making foreign graduates come here to Canada, but all from South Africa. Why the difference?

**Mrs Witmer:** This is just recently?

**Ms Constant:** Recently, Radio-Canada.

**Mrs Witmer:** It's unbelievable when we have individuals within our own country who are quite capable. I thank you for your presentation, and as I say, unfortunately I don't think this bill is going to totally solve the problem.

**Ms Constant:** Yes, but I think they can get a step from it because it's a right to employment we're asking for.

**Mrs Witmer:** Yes.

**Ms Constant:** Because I don't know how many black women are here in Toronto who do speak French who are MDs.

**Ms Carter:** I think what I have to say is more in the form of a statement than a question, because I think the power of your story is in a sense unquestionable. All I can say, really, is that the Ontario government is responding to the broader picture of the difficulty of access to trades and professions, and Minister Elaine Ziemba made an announcement on December 10, 1992, to that effect, which I believe was the 44th anniversary of the United Nations Universal Declaration of Human Rights.

So there is a strategy that the government has adopted to improve access to trades and professions and address the systemic barriers which do prevent many people who were not trained here from working in their respective fields, and as a cornerstone of that, the



government has allocated \$2 million over two years towards a demonstration project fund which is going to address some of the problems.

Now having said that, I have to say that the medical profession is not included in that, and as you say, there is considered to be an oversupply of doctors, which again is an historical thing, that the medical schools right here took in the numbers of students on the assumption that the population of Ontario would be greater by now than in fact it is, so that we do have an oversupply.

Having said that, I don't think that in any way answers your points that you have very particular contributions to make, and I'm sure there are other people in your position or a similar position who have contributions to make which cannot, maybe, be made by

some of those people who are trained here and constitute part of that oversupply.

So I don't feel in any way I'm answering your case. I think what you've come up against is not to be condoned and I certainly hope that we can work to remove those barriers for people in the medical profession, as in other professions.

**The Chair:** Ms Constant, thank you for coming and sharing your personal story and thoughts on this issue with us.

**Ms Constant:** I hope you can include it somewhere in the bill, because everybody should have access to work.

**The Chair:** Thank you. This committee's adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1701.





*Continued from overleaf*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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**\*Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Akande, Zanana L.** (St Andrew-St Patrick ND)

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**\*Curling, Alvin** (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

Malkowski, Gary (York East/-Est ND)

**\*Mills, Gordon** (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

**\*Tilson, David** (Dufferin-Peel PC)

**\*Winner, David** (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Callahan, Robert V. (Brampton South/-Sud L) for Mr Chiarelli

Carter, Jenny (Peterborough ND) for Mr Malkowski

Fletcher, Derek (Guelph ND) for Mr Duignan

Perruzza, Anthony (Downsview ND) for Mr Winner

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

### **Also taking part / Autres participants et participantes:**

Bromm, Scott, policy adviser, Ministry of Labour

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

### **Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service

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## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 25 August 1993

# Journal des débats (Hansard)

Mercredi 25 août 1993

## Standing committee on administration of justice

Employment Equity Act, 1993

## Comité permanent de l'administration de la justice

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Lisa Freedman

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 25 August 1993

The committee met at 1001 in room 151.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

CANADIAN MANUFACTURERS' ASSOCIATION,  
ONTARIO DIVISION

**The Chair (Mr Rosario Marchese):** I welcome the representatives of the Canadian Manufacturers' Association and point out that you have half an hour for your presentation. A number of people have been using a lot of the half-hour for their presentation, leaving very little time for questions. If you can make your presentation up to 15 minutes, that would allow five minutes for each caucus to ask you questions. Please begin at any time and introduce your colleagues from left to right.

**Ms Janis Wade:** Thank you very much and good morning. My name is Janis Wade and I'm the vice-president of human resources at CCL Industries Inc. I'm also the chair of CMA's human resources committee. With me are Linda Bishop, Dofasco's employment equity coordinator, and Ian Howcroft, CMA's employee relations policy adviser.

The Canadian Manufacturers' Association, Ontario division, appreciates the opportunity to provide the standing committee on administration of justice with its comments on Bill 79. The CMA has been very involved with this important issue and has made numerous submissions and representations regarding employment equity over the last several years.

As most of you are probably aware, CMA is a voluntary organization which represents manufacturers of all sizes, from all sectors and from all regions of the province and the country. Our members produce approximately 75% of the province's and the country's manufactured output. In Ontario, approximately 847,000 workers are directly employed in the manufacturing sector, and another 700,000 jobs in the service sector are dependent on manufacturing.

To start out, before we comment on Bill 79 specifically, we'd like to make very general comments with regard to employment equity. CMA has always supported the intent, concept and goals of employment equity: the removal of overt and systemic discrimination and barriers from entrance to or promotion in the workplace.

We argued that employment equity could best be achieved through non-legislative means rather than a mandatory legislative approach.

It is important to highlight the work that CMA has accomplished and is continuing to accomplish in the area of employment equity. For example, CMA has dedicated resources to ensure that the employer perspective in general, and the manufacturing perspective specifically, were provided to the government in developing its initiative. We were represented on the regulations development advisory group during the initial stages of the regulation development process, and we continue to be represented on the minister's technical advisory committee to ensure that the minister is kept apprised and advised of our concerns on the issue.

CMA is also developing an employment equity manual that will assist manufacturers, and hopefully any interested employer, to understand and implement employment equity. This is not a new role for us, as we have developed other related manuals such as Employment Equity for Women: How Does Your Company Measure Up? (which was a joint venture with the Ontario women's directorate) and the CMA Pay Equity Manual.

The office of the Employment Equity Commissioner is currently updating the How Does Your Company Measure Up? manual to take all four designated groups into account. CMA has also held numerous seminars and events on employment equity to ensure that our members understand what is required of them and how they can best implement and achieve the desired goals of employment equity. In fact, we have a full-day conference on employment equity scheduled for September 24, at which both the minister and the commissioner will be speaking.

CMA would like to commend the Minister of Citizenship, the deputy minister, the Employment Equity Commissioner and their respective staff for the extensive consultations they conducted and for the accessibility they have afforded CMA and other groups. However, there is still a need for some significant changes to the bill and to the regulation to ensure that employment equity can be implemented in a reasonable, workable and pragmatic manner.

The government must recognize that employment equity is a multifaceted and complicated issue. There are no easy answers or quick-fix solutions. It could take years before significant quantitative changes will be realized. This is especially true as we are experiencing one of the worst recessions in decades. Employment

equity would be an extremely difficult process to implement in the best or most robust of times. These dire economic circumstances only make things more difficult.

Manufacturers in Ontario, and in fact all employers, are challenged on a daily basis with the economy and with other government initiatives, legislation and regulations. The government must do all it can to improve and enhance the province's competitive position. We are a small part of a larger global economy, and the government must eliminate unnecessary burdens and assist employers to become more competitive. Consequently, all government initiatives must take the economic realities into account.

CMA has always felt that employment equity could best be implemented if the government provided a leadership role vis-à-vis education, communications, training, and developing assistive materials. It is also essential to recognize that changes will have to be made to our education and training systems, as an integral component of employment equity is ensuring that there is a qualified labour pool which employers can draw on.

It is also essential that there be flexibility in the system, as each employer will face different problems and situations. There is no one right way to achieve employment equity, therefore it would be detrimental to the goal of achieving employment equity if an employer's options are limited. The legislation and the regulation must ensure this flexibility and avoid undue rigidity. We therefore suggest that the legislation be redrafted to incorporate and allow for the necessary flexibility and to remove some of the prescriptive sections which would force employers to take actions that would not be successful at their workplaces.

Today we will try to focus our main concerns on the bill. However, we may find it necessary to comment on some specifics that were left to the regulation. CMA will also be providing the ministry with a submission on the regulation prior to the October 29, 1993, deadline.

One of the major issues that CMA raised with the ministry was the need for harmonization with other governments' employment equity initiatives. The government has acknowledged the benefit and need for harmonization and has taken steps to try to ensure that harmonization does occur. It would not make economic sense to require a company to expend resources to comply with different bureaucratic requirements. We were therefore pleased to see that the regulation under Bill 79 will recognize an existing survey and employment systems review if certain requirements are met. Although there are some differences with the definitions of the designated groups in the federal government's employment equity initiative, we are hopeful that true harmonization will occur.

The government has recognized that with limited resources they must be used as productively and effec-

tively as possible. We encourage the government to continue to work with the federal and other governments to ensure continued harmonization. If a company is in compliance with one government's initiative, it should be recognized by the other governments.

I'm going to pass the presentation over to Ian to continue now.

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**Mr Ian Howcroft:** CMA is extremely concerned with Bill 79's requirements, and the regulation's requirements, with regard to the joint development of an employment equity plan with a trade union. CMA recognizes that employee participation and involvement are important. In fact, they're essential to implementing a successful employment equity initiative. However, we do not feel that the bargaining or negotiating of an employment equity plan is appropriate. CMA feels that employment equity is of such import that it should not become a "bargainable issue." Rather, the legislation and the regulation should set out the requirement that an employer consult with its trade union and with its employees if they're not in a trade union. Therefore, the sections requiring joint development or joint responsibility should be deleted.

To retain the requirement of joint responsibility could cause delays in implementation, create an adversarial relationship with the union or other employees, fragment the workplace, add unnecessary complications and result in more issues being referred to the commission and/or the tribunal for ultimate resolution.

Each employer should be able to determine the best consultative vehicle for its own purposes. It is impossible to codify or set out in the regulations the best approach for every company. As it is in the employer's best interests to ensure the successful implementation of its employment equity initiative and its employment equity plan, there's a great incentive to ensure that employee participation takes place properly and that the necessary information is solicited.

Furthermore, it's unfair to have "joint responsibility" when only the employer is held accountable. Therefore, the "joint responsibility" aspects of the bill must be deleted and replaced with a productive consultative mechanism. The commission should develop guidelines outlining various consultation methods and models that could be used by employers to determine what's the best consultation vehicle for their purposes. This is a major area where amendments could be made to help add flexibility to the government's initiative.

Another related issue pertains to seniority rights. CMA objects to the protection of seniority, given that there is no corresponding defence for employers if seniority hampers them from implementing or reaching their employment equity targets or goals. This section should be deleted or employers should, at a minimum, be given the same protection. Seniority can be a barrier



to achieving or furthering one's employment equity initiative.

Another issue of significant concern pertains to the requirement for self-identification in the survey. Given that employment equity under Bill 79 is still a numbers-driven process, it is essential that the data be as reliable as possible. Using only self-identification will be fraught with problems and it lends itself to possible abuse, underreporting and unreliable data. We therefore suggest that self-identification be used as a starting point, and in most cases this is probably entirely sufficient. However, there must be an alternative mechanism to ensure that the data is correct and reliable.

For example, under Bill 79 and the regulation, an employer would be forced to use the data as per the survey results even if the employer could demonstrate through other data or surveys that the results were ludicrous and not a true reflection of its workforce. An example that one employee member cited concerned a decision made by a significant number of its employees to not complete the employment equity survey. This decision was made for reasons unrelated to employment equity. The misuse of the survey would result in a situation of underreporting, which we find unfair and inequitable. In situations of intentional abuse, there is currently no mechanism to prevent or correct this.

Another example where using only voluntary self-identification could pose a problem is where a company has expended resources to accommodate a person with a disability but, because of this accommodation, he or she does not feel disadvantaged and hence does not self-identify. If an employer has expended resources, then it should be able to have the person identified for employment equity purposes. Again, in a numbers-driven system, an employer must be able to demonstrate the positive results and successes that stem from its efforts.

We therefore recommend that the issue of self-identification be revisited, and we would suggest that a combined or alternative mechanism be provided for in the legislation. Once everyone is familiar with employment equity and its intent, people will feel more comfortable with self-identification. For the last 10 or 15 years people have been told, "You can't ask certain questions on application forms," so they have a mindset that, "We shouldn't be asked this; we're not going to answer it," so you have to get over that hurdle. Once we've reached that, it will be a different situation, but until then we need to have some type of alternative mechanism to correct data that are wrong and can be demonstrated as such.

I'll now let Linda Bishop finish our formal presentation.

**Ms Linda Bishop:** We'd also like to express concern with regard to the requirement in the regulation to

resurvey after nine years, which could prove to be a needless waste of limited resources. If an employer has a process or processes in place to ensure that its survey data is updated on a proper and continual basis, there's no need to require resurveying. Resurveying should be left open as an option for companies that feel it is necessary in furthering their employment equity initiatives. However, resurveying should not be a mandatory requirement if a company can demonstrate that it has valid, up-to-date data.

Confidential information is another area we're extremely concerned about. There have to be limits on the information that an employer would be required to provide or make accessible to the employees or the trade union. Any information of a strategic nature that pertains to its future plans, that concerns the viability of the company or the company's financial position should not be released. To release such information could negatively impact the company and weaken its competitive position. Employers must ensure that they can protect themselves and this requires maintaining certain information as confidential.

Companies also have confidential information about their employees that employees would not want released. Therefore, employers are in a position of trust and have certain fiduciary responsibilities vis-à-vis this information. These rights and responsibilities must not be abrogated by the legislation. The rights of the individual employee must be recognized and protected.

The legislation and the regulation must ensure that fishing expeditions will not be permitted. To release certain information could be damaging to the economic viability of the company and it could result in lost jobs which would be the advantage of nobody. Therefore, it's essential that employers be allowed to protect confidential information.

We were pleased to see that the government made changes with regard to goal setting in the regulation from what was initially contemplated. For example, we were happy to see that the requirements for goal setting are in relation to opportunities for change. This makes much more sense and will be far less onerous than what had previously been discussed, such as setting specific numbers as goals. However, even with these improvements in the regulation, we'd like to see changes made in the bill that would codify the merit principle.

Employees must have the requisite skills and abilities to do the job. In a competitive marketplace, qualifications cannot be sacrificed and this should be recognized in the legislation itself. The minister and other ministry officials have stated that the merit principle will not be sacrificed in the pursuit of employment equity and therefore it shouldn't be difficult to include that kind of language in the legislation itself.

It's also important to stress that an employer's workforce must only be compared to the qualified and

available labour pool. We would therefore suggest that this also be included in the legislation. We are concerned with the regulation referring to the working-age population in certain circumstances. The working-age population would include many individuals who are not interested in working or not available for work or who are not able to work. To compare an employer to this group is unfair, inappropriate and non-productive.

CMA has concerns with regard to the duty to accommodate. There is currently a duty to accommodate under the Ontario Human Rights Code and there may be conflicting or differing duties to accommodate depending on which piece of legislation we use. It's essential that in determining what type of accommodation should be required, the reasonableness test or standard be used. One should only be required to expend resources or take action that would be reasonable in the circumstances. It is hoped this is the interpretation that will be used and followed by the Employment Equity Commission or Employment Equity Tribunal.

In conclusion, we recommend that the best way to realize a successful employment equity initiative is to have the necessary buy-in from the employer community. This can best be achieved by ensuring that the legislation and the regulation are themselves reasonable and will not result in an onerous, bureaucratic, regulatory nightmare. If employers can have confidence in the system, they'll be much more likely to accept the government's initiative and be receptive to the government's approach to employment equity.

Approximately 80% of new workforce entrants will be members of the designated groups. It would therefore not make good economic or business sense to exclude the majority of the potential new workforce from consideration. However, for the foreseeable future, there will not be a lot of hiring. In fact, the trend is still to downsize and streamline operations. There will not be radical changes to hiring trends over the next three to five years. This is the unfortunate economic reality with which we must deal.

The most beneficial and productive use of resources for the ministry and the Employment Equity Commission will be in the area of education, training and communication. They should work with the employer community, the worker community, designated groups and other interested parties to make sure that appropriate and useful materials are developed. If this is done, it'll go a long way to ensuring the proper implementation of employment equity. CMA will continue to work with the minister, her officials and the office of the Employment Equity Commissioner to ensure that a productive and workable employment equity initiative is realized.

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Finally, CMA would again like to express its support for the intent, concept and goals of employment equity.

The legislation and the regulation should set out the framework from which one must work, but there must also be enough flexibility for each employer to take its own unique circumstances, workforce and conditions into account. It's impossible to develop legislation and a regulation which will encompass every situation and be applicable or appropriate to every employer. Consequently, the legislation and the regulations should not attempt to do this. This type of information would best be left for guidelines and other assistive materials that the ministry, and particularly the Employment Equity Commission, should develop and promote.

Of course, in order to address the whole issue, there are other factors the government must be cognizant of and address. These include such things as education, training, societal values, demographics and culture, to name but a few. Only if all these dimensions of the issue are addressed will the entire situation improve. It must also be recognized that change will take time; 10 years is not a long period in evaluating the success of an employment equity initiative. We hope we've been productive in our comments and we welcome any questions. We apologize for taking a little bit more time than we should have.

**The Chair:** We'll begin with the third party. There are three minutes per caucus.

**Mrs Elizabeth Witmer (Waterloo North):** I want to congratulate you. I think it's a very constructive response to the government's initiative and I think you've certainly made some excellent suggestions. I see that the key to your presentation really is the need for the employment equity bill and the legislation to be as flexible as possible to accommodate the needs that the individual employers have, whether they're large or small, or where they're located. Yesterday we had the municipal sector in and certainly they have unique needs as well.

I'd like to focus on self-identification. It has certainly been indicated to us, as you have, that this could be an area where we're going to have some problems, and you've suggested that some people might not wish to self-identify in the appropriate way. You're suggesting there be a combined or alternative mechanism provided. How would you see that worded or what type of alternative would you see?

**Mr Howcroft:** What we were envisioning was to have self-identification as a starting point and, as we said, in many cases that would be sufficient. There wouldn't be any problems. But where an employer knew that the survey data was inaccurate or not correct or not truly reflective of his workplace, they have some type of fallback position to say: "No, this is the true situation we have. We had conducted a survey earlier. We have other information that would show that we have better representation than what the results show," whether there's a problem, someone was abusing the



survey, and the results just are not reflective. There has to be some safety mechanism there to allow for that type of information to come forward.

**Mrs Witmer:** Then there needs to be an amendment worded in some way that would accommodate that?

**Mr Howcroft:** Yes, in the legislation itself.

**Mrs Witmer:** You mention that there's a possibility there might be some confusion between the Human Rights Commission and employment equity. Do you want to expand on that further? What difficulties can you foresee in it?

**Mr Howcroft:** We see in other areas where you have one piece of legislation referring to another piece of legislation, you have different standards. In one piece of legislation an employer might be found not to have been in violation, in another you are, so we'd just like to see some consistency. We stress that when you're looking at accommodation, there has to be a reasonableness test or a reasonable standard. We just want to assure, as best we can in the legislation, that goal is realized.

**The Chair:** Thank you. Sorry, there's no more time.

**Mr David Winninger (London South):** Thank you for your presentation. A number of presenters, both individuals and groups, have suggested that there be no modifications or exemptions for smaller companies—for example, under 50 or under 100—and that the provisions of the Employment Equity Act should be extended uniformly to smaller companies. One presenter suggested yesterday it was enough to have two employees to attract the provisions of the act.

Could you comment on that, given your stated preference for flexibility in the operation of this act?

**Ms Bishop:** One of the things we need to keep in mind is that all employers' circumstances aren't the same, particularly if you're dealing with a larger organization and a smaller one. There will be different resources allocated to human resources in a larger company versus a smaller company. If you're looking at having all organizations comply with the bill, then you really have to be flexible because what, let's say, Dofasco will be able to do with our resources might not be the same that a smaller organization can do with its budget and its resources. Indeed, we shouldn't be looking for the same kind of compliance with smaller and larger companies.

**Mr Winninger:** Thank you. Secondly, some companies, particularly larger corporations, have suggested, to ensure flexibility for their corporations with many workplaces, that they be allowed to develop employment equity plans for several specific workplaces as opposed to a company-wide or, in some cases, a province-wide plan. Do you have any response to that?

**Ms Wade:** Certainly from our standpoint at CCL, we have a number of different locations within the

province of Ontario. They are totally different businesses, totally different workforces and I think certainly any plan that they create, for it to be effective, would have to be specific to that location. A company-wide plan would not be nearly as effective as the individual workplaces because there are so many differences.

**Mr Winninger:** So you would adopt that approach?

**Mr Howcroft:** I think it gets back to flexibility. Certain companies, it might be appropriate; others, it wouldn't be appropriate. You have that flexibility to allow companies to take the steps that best promote employment equity and best allow them to realize those goals. You can't compartmentalize everyone into one situation because the differences are so varied.

**Mr Alvin Curling (Scarborough North):** Thank you for your presentation. I think you've made some excellent points here in your presentation. I also see quite a few contradictions, too, in your presentation. The fact is that one of the things that caught my eye strongly was, you said: "Approximately 80% of new workforce entrants will be members of the designated groups. It would therefore not make good economic or business sense to exclude the majority of the potential new workforce from consideration."

The reason the law is being put in place is because we have found that the designated groups are being excluded and we have heard the words here all the time, that it makes good economic sense to have employment equity, but it was never done. So I've seen somehow there is a support for employment equity; however, it's a bad time to do it. Maybe I'm picking up wrong from your presentation but—

**Mr Howcroft:** I don't think that's the point we're trying to make there. What we're trying to say is that if the economy improves and companies start recruiting in large numbers again, 80% of the people are going to be members of the designated groups into the workforce. What we want to ensure is that companies can get the best people from all sectors, all the designated groups and to do that you look at the qualifications and that's why we want to codify the qualification or the merit principle in the legislation itself.

**Mr Curling:** But this is the whole entrenched thinking, that the people who are coming in are not qualified. That's why we want the government to entrench in the legislation that the merit principle is there. People are qualified coming into the workplace. They have been shut out. Those who get in are not moved up because of the contradiction of the unions which have worked out some deal somehow that seniority must be protected. Even if they get in—you see, there is trouble coming in, access; and there's trouble going up. The fact is that it must be treated fairly on that basis. People are qualified.

The other aspect you're talking about, training and

education, is also extremely important, not only from inside the workforce but also outside of the workforce, that people have access to the professions they want to get into. I see a lot of contradiction when I see a presentation that's saying it makes good economic sense; however, the economic time doesn't tell us to do that. So educate me a bit.

**Mr Howcroft:** That's not the presentation we were trying to make or the position we were trying to give. What we're trying to say is that the qualifications are essential. We recognize that there have been systemic barriers. That's why we're here, to support the concept and intent of employment equity. We just want to make sure it is workable and that we have a piece of legislation that's not going to be process-oriented but rather is results-oriented.

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**Mr Robert V. Callahan (Brampton South):** I have concerns. You've talked about the self-identification aspect of it and I think you've dealt with it in terms of the employers being able to show that they have satisfied the goals that they're required to do.

I want to come at it from another standpoint. I want to come at it from the standpoint of the people who are disabled specifically—let's say a person with a learning disability, not a dramatic one like the one where they write backwards or something, something like attention-deficit, which is a very prevalent learning-disabled thing, or a person who's an epileptic not identifying themselves or not being aware that this is going to get them a leg up by identifying themselves, and therefore being denied any benefits from this act whatsoever.

It would be better to spell out in the definitions what "disabled" means. Would you agree with that?

**Mr Howcroft:** I'm not sure I understand the question. I'm sorry.

**Mr Callahan:** You've done it from the standpoint of wanting self-identification of a person who's disabled so that you can say, "We've met the test of employment equity." That's the way I understand your brief.

I'm coming at it from the other side of the coin. If this is to help people, particularly disabled people, just as an example, and these people happen to have a disability which they don't consider to be a disability that's within the framework of the legislation so they don't record it and they get treated just like anybody else and they get no benefit from this act whatsoever, would it not be better to have it spelled out more specifically in the legislation what disabled is, what it includes, if it is just a person who's clearly disabled—a blind person, a person who is unable to walk—or if it includes these other aspects of learning disabled and so on?

**Mr Howcroft:** Our concern comes down to ensuring that the data the employer has are as reliable and as

accurate as possible. What we want to have is the data reflect accurately the workplace composition, and self-identification can't do that on its own. We want to have a fallback or safety mechanism that an employer can use to make sure that the data is reliable, since that's what it's going to be held accountable to and compared to. That's our intent and those are our concerns with regard to self-identification.

**Mr Callahan:** I knew that—

**The Chair:** I realize, but we just have no more time. I thank the Canadian Manufacturers' Association for this presentation and participating in these hearings.

#### TORONTO EMPLOYMENT EQUITY PRACTITIONERS' ASSOCIATION

**The Chair:** Toronto Employment Equity Practitioners' Association: I would like to welcome all of you. Ms Dauphinee is the spokesperson. If you could you introduce the members on either side.

**Ms Mary Dauphinee:** I will during my presentation.

**The Chair:** We have half an hour. Leave plenty of time, if you can, for questions and answers.

**Ms Dauphinee:** Chair and members of the standing committee, I am Mary Dauphinee, past president of the Toronto Employment Equity Practitioners' Association and current chair of the legislative subcommittee. Nan Weiner, our current president, sends her regrets, but she is out of town.

On behalf of TEEPA, I am pleased to have this opportunity to comment on Bill 79 and to offer you our recommendations for amendment, which are outlined in more detail in the brief which we sent to you on Monday.

TEEPA is an active non-profit organization made up of over 300 employment equity practitioners. While we have members from across the province, most of our membership is located in the greater Toronto area. Our members are employment equity practitioners working for both the private and public sectors as well as unions, private consultants and trainers, and members of advocacy groups. Most of our members belong to one or more of the designated groups.

I have several colleagues here with me today who will help me answer any specific questions you may have about our submission: Jane Garthson, a private consultant; Jerroo Irani, who works in the public sector; Carol Moulard from the private sector; Lynn Bevan, a lawyer and author of a new book on employment equity implementation; and Mary Woo Sims from the broader public sector.

We are here to strongly support the passage of employment equity legislation in Ontario. Since we were formed in 1987 we have worked diligently towards this end. We are committed to legislation that is fair to all parties concerned and effective in achieving equity in the workplace within a reasonable period of time.



We are also practical people. Most of us work in the employment equity field and have firsthand experience with what does and does not work. We want legislation that is simple, practical, workable and oriented towards getting results.

We believe that our recommendations will strengthen the legislation, help defuse unnecessary opposition and better protect the rights of employees and employers.

While we support the passage of Bill 79 without delay, we believe that, in its present form, it will be difficult to implement for small employers. There are also some elements of unfairness to employees that we believe will cause unnecessary conflict in the workplace.

These difficulties, if not addressed, will, in our opinion, work against our mutual goal of fair treatment of all persons in the workplace.

Today, I will highlight six key areas of concern that we have with Bill 79 as it now stands and some general issues. These are all presented in greater detail in our brief. These include surveys, employee participation, seniority, administration and reporting, enforcement and definitions. I'll start with surveys.

TEEPA agrees with the legislation that self-identification is the most appropriate method of identification for employee surveys. However, our experience shows that if left as the sole method for collecting data, it can lead to inaccuracies and badly skewed data. For a number of reasons, employees intentionally or unintentionally provide inaccurate information or refuse altogether to participate in employment equity surveys. In fairness to the purpose of the survey and the employer who is being held responsible, there is a need to include a clause that allows employers to maintain the integrity of the data. The TEEPA brief outlines circumstances in which resurveying and one-on-one communication could be appropriate where the employer believes the integrity of the data is in doubt.

TEEPA also recommends that there be guidelines for data storage and access to reassure employees of confidentiality. Such assurance is necessary if employees are to be successfully encouraged to participate. Otherwise, the rate of accurate returns could be very low.

Further, in support of proactive hiring, TEEPA recommends that employers receive the explicit right to collect pre-employment data on designated group membership, so long as such requests are clearly earmarked for employment equity purposes.

Finally, to ensure that time and resources are not spent in unnecessary resurveying, we recommend that employers have the right to use existing surveys where results would likely be substantially similar.

Employee participation is another area of concern for TEEPA. We are concerned not only with fairness to all

employees but the appearance of fairness to all. The legislation appears to depart from this principle in its approach to the differential requirements regarding the participation of union and non-union employees. We also suggest enforcement provisions for employee representatives who obstruct the implementation of employment equity.

We were pleased to see the government discuss seniority in the legislation. We find the current wording of subsection 5(2) to be confusing. It appears to allow seniority to override employment equity in layoff and recall, without clarifying that this is an exception to employment equity principles. It also leaves other applications of the seniority principle unclear and in question.

TEEPA does not believe that basic human rights can or should be the subject for a negotiation or bargaining. Therefore, TEEPA recommends that subsection 5(2) be deleted. If this is not acceptable, we propose that at least the principle be stated that employment equity overrides seniority except in these specific situations and only when other options have been explored and not found feasible. We believe that this reference to seniority must be amended to make it absolutely clear that where seniority is identified as a barrier in any circumstance, the employer and the employee representatives must find solutions that do not take away from human rights.

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In the administration and the reporting sections, TEEPA is concerned about delays in implementing employment equity if undue administrative burdens are placed on employers. TEEPA recommends making the Employment Equity Commission formally responsible for providing support to employers in areas such as external workforce data and software. TEEPA further asks that no administrative or reporting requirements be imposed on employers except those necessary for the employer's internal evaluation and plan development and commission monitoring.

TEEPA is very concerned with the enforcement section of the legislation, especially with the proliferation of tribunals related to equity and human rights. The processes of enforcement should be simplified and streamlined wherever possible. A single-window approach is recommended for laying complaints and hearing appeals. Employees should not have to have their complaints bounced from one organization to another. Again, employers' workforce actions should be perceived as part of an overall system of strategies and practices, not seen in isolation from one another.

TEEPA recommends an expansion in the operation of the Human Rights Commission to allow for employment equity-related discrimination complaints and systemic audit. The Employment Equity Commission's role would be administration, communication, support,

monitoring and compliance auditing. In addition, there would be no Employment Equity Tribunal and the human rights board of inquiry system would include employment equity hearings. We believe that these changes are essential as they would reinforce the supremacy of the Human Rights Code, which we feel the current wording in section 51 jeopardizes.

TEEPA suggests revising some of the definitions in the legislation. We recommend that the definition of "employer" should be consistent with other Ontario labour laws and should ensure its application to related employers in light of the difficulty with pay equity legislation in this regard. Employers should not be able to form artificially smaller entities in order to avoid levels of compliance with the legislation. We also recommend that the act provide clear definitions for "positive measures" and "accommodation," since how these are interpreted is crucial to the success of the legislation.

TEEPA supports leaving the definitions of designated groups out of the act so long as Bill 79 does not restrict the government's future ability to issue regulations that define and deal with subgroups such as persons with severe disabilities.

Many TEEPA members are very concerned about the opposition to the legislation. The main arguing point has been that employers will be forced to hire unqualified people. TEEPA members know that hiring and promotion in the past was often not based on qualifications or merit. Employers often had not even determined bona fide job requirements or made efforts to obtain applications from the total potential workforce. Many of those voicing opposition to Bill 79 know this also. But employers who have less time to become familiar with the issues and the act may believe the rhetoric.

TEEPA sees no inconsistency between hiring and promotion based on qualifications and this act. Some employers need to improve their ability to recognize the talents that exist within members of designated groups and to utilize that talent to the maximum.

TEEPA notes that even employers committed to employment equity have difficulty achieving a fully representative workforce due to aspects beyond their control such as inequities in education, transportation, child care and training provisions within society as a whole. The act should acknowledge that employment equity in the workplace must be part of a larger program to ensure fairness and equity in our society.

Finally, TEEPA recommends that the long-term goal of employment equity be added; that is, that throughout all workplaces and in all employment-related practices, every individual receive fair treatment. Perhaps some day there will no longer be a need to identify and count people by their group membership.

In closing, I hope you will recognize that TEEPA is

a strong supporter of Bill 79. Our amendments are not in conflict with the goals or the principles of this act. I urge you to give serious consideration to our concerns and recommendations and once again I thank you for this hearing. My colleagues and I will be pleased to answer any of your questions.

**The Chair:** Thank you very much. We'll begin with the government members. Ms Carter to begin. Five minutes.

**Ms Jenny Carter (Peterborough):** Thank you for your very thoughtful presentation. I wanted to ask you a little about your ideas on self-identification. You're suggesting that since data might not be accurate, an employer should have the right to discuss the survey response with any individual. But I wonder whether you see any possible downsides to this, whether this might put undue pressure on employees or detract from the principle of self-identification.

**Ms Jane Garthson:** We'll acknowledge that there's a possibility some employers could use coercion, but there should be provision to complain about such inappropriate application of employment equity. In an organization large enough to have an employment equity coordinator who is other than the manager, our wording recommends that that person do the one-on-one communication. We're also saying it's only to give the employee a chance to reconsider their response; we're not going to change it for them. Only they know whether they are disabled or a member of a group.

The other part of our proposal is to simply keep resurveying. We think the commission should set some minimum percentage of return, and if it's below that, it's just not good enough to base your workforce data on. So there would be another round of general communication first about why an accurate survey response is important, and then an opportunity for those who hadn't returned the survey the first time to try again.

**Ms Carter:** Well, we are envisaging a process whereby employees would be very thoroughly informed as to why they're filling in this survey and that it will not detract from their position in any way. So I think we feel that once that has been done, we can expect a reasonable level of reliable self-identification.

**Ms Mary Woo Sims:** Our experience has been that no matter how well you educate or how well you inform, there will be a segment of people, employees in your workforce, who for a variety of reasons, whether they see themselves not benefiting from employment equity measures or those who have experienced discrimination in the past and don't believe that this is going to be helpful—for a variety of reasons, no matter how well the communication or education program goes, we won't have a return rate that might be adequate for employment equity planning.

So a means of follow-up with employees is really



essential in our view, as practitioners, to enable us to do appropriate planning. Short of that, we believe that a 100% response rate is not necessary to do the planning, and maybe a commission-set standard of a minimum response rate upon which you could start your planning would be helpful for us.

**Ms Carter:** But a question was raised, I think by the previous presenters, that when an employer had accommodated for somebody with disabilities, that person might no longer feel disabled and therefore might not declare himself or herself as disabled. But it would be perfectly legitimate, under what we're putting forward, for the employer to state the fact that so much had been spent on accommodation, so that that would be taken into account.

**Ms Lynn Bevan:** I'd like to address two aspects of that comment. The first one is you're quite right that the question of self-identification combined with the right for all designated groups except women to do it as a subjective test means that it is perfectly open to disabled persons to identify themselves or not. I'm now skipping into the regulation, but we are going to be using a subjective test. So that is quite right.

I believe the question really is: What is the purpose of the survey? It's to provide for planning. For someone in Ms Sims's organization, as large an organization as a major public sector organization, that is more realistic to say 100% return is not necessary. It is less of an option for someone who has 100 employees. If we continue to believe the projections that most employment opportunities are going to arise in smaller, private sector organizations, then I think that this act must work equally well for the smaller organization as for the larger organization that can afford to have the employment equity coordinator or some other designated person.

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One way I have found in my work with this area, and it goes back a long time, is that the most important thing is communication. That will take employees a long way. Ms Sims is quite right; it won't take them the whole distance. But supplemented by very strict rules and confidentiality, that seems to be the best way to ensure that employees will have the confidence to participate fully. And there are to be consequences for failing to maintain that. But I do really support this position very strongly that if you're trying to get an adequate database for planning, you must take into account smaller organizations where anything less than a very high percentage return will be inadequate for planning purposes.

**Mr Curling:** I am just curious. It's quite a large delegation and they are all women. Is that by accident?

**Ms Dauphinee:** It's interesting that you should ask that question because several of the people here presenting asked the same question. As I said before, a lot of

our members are male. But I guess my question to you, Mr Curling, is, would the deputation be any better if there were males here?

**Mr Curling:** Quite possible. Because what I am saying is employment equity, as we know, is about the designated groups. Optics is an important thing, as a matter of fact. I just wanted to bring it on the table. Maybe it would never have been better from—the presentation's all written, but I would say that the concerns and the feeling—and I don't want to get into that. I just was rather curious.

**Ms Dauphinee:** I'd be glad to that have debate with you, but I think we should have it outside this room.

**Mr Curling:** I would be happy to.

I think you have raised some rather excellent points of view in your presentation. As you said, you are a strong supporter of employment equity, just like myself, but I am not a strong supporter of this bill. I think you have said the same thing of the weakness that you identify in here: things like the seniority, the administration reporting procedures. You talked about especially one of the things I am extremely concerned about, that employees will be bouncing from one organization to the other one, and where their concerns will be redressed, whether it's at Human Rights, whether it's the courts, whether the Employment Equity Commission.

Now, having said all of that, Ms Dauphinee, you've made some recommendation of how maybe the Human Rights Commission could take over some of the concerns or some of the duties that will be addressed by the commission. If this bill goes through as is, without any amendments, would you feel the same way, as strongly, about the bill? I know your concerned about employment equity, you're stand there. Your commitment is very strong about employment equity, but would you feel very strongly about supporting this bill as is?

**Ms Bevan:** That's a two-part question. I will start. In terms of the enforcement, I would like to express my very strong disapproval of the bill as it is structured on a litigation model. The problem is that you set up, first of all, an old-style confrontational model for employee participation and reinforce that by a litigation model, saying that those who come in to audit also have the right to order, and if that doesn't work, it then goes to a tribunal. That's irrespective of other concerns that would exist about coexisting rights to go to Human Rights arbitrations or any other models. So the primary problem with the bill is the structure. It is based on a confrontational model and then reinforced by a litigation enforcement model.

Experience with other jurisdictions, of which I am sure you are aware, including the United States, which has had a model in place over 50 years, is that contract compliance has a very high percentage of participation

by employers because they know that those bodies cannot go in at the end of the day and put a black mask on and make an order against them. They really are from the government and there to help them.

It's very difficult, when you have a model that's based on the pay equity model, and we've seen what has happened there. There's a great resistance to full participation in mediation and settlement when that very same officer has the right to make a binding order at the end. The model that's set up here in fact is a pay equity model. It sets up a commission with investigating officers who have the right to make orders. It also has a tribunal.

I'm answering the question slightly differently from the way you've framed it. I think there's a structural problem there which goes beyond the question of whether it's the Employment Equity Tribunal or the Human Rights Commission which enforces that.

I think Ms Dauphinee has something to add on the question of whether or not we would support the bill if it went in in its current way.

**Ms Dauphinee:** Yes. People will support the bill if it goes in in its current way and will do the best we can to implement it under the circumstances.

**Mrs Witmer:** Thank you for your presentation. I thoroughly enjoyed it, and I have to tell you that I'm quite pleased to see six females here. I think it's interesting that the question would even be raised as to why. We've had men here who are the presenters and the question is never raised.

**Ms Margaret H. Harrington (Niagara Falls):** It never came up.

**Mrs Witmer:** That's right.

**Mr Curling:** Well, straight honesty.

**Mrs Witmer:** That's true, Mr Curling; it is honesty.

Anyway, I think you've made a very valid point. It's a concern that I've had and certainly it's a concern we've seen in some of the other labour legislation that has been initiated by the government, the fact that this really does continue to promote and encourage the old-style adversarial, confrontational labour relations. It's certainly, I think, one of the biggest flaws and drawbacks of the bill.

What about the preamble? Do you believe the statement in the preamble should be changed? Because I think that's probably where the confrontation style starts. There is some blame there levied, I think, in paragraph 3. You didn't comment on the preamble, but I guess I personally always believed that it should be a much more positive preamble.

**Ms Bevan:** Since I'm the designated lawyer, if you're talking about the preamble that refers to other legislation—or are you talking about the employment equity principle?

**Mrs Witmer:** The one that refers to systemic discrimination and the fact that that's recognized.

**Ms Garthson:** I'm Jane Garthson. In part we were trying to deal with that by asking that the bill acknowledge that employment equity is only one part of a joint effort for fair treatment throughout our society, and we would see that change as taking place within the preamble wording.

**Ms Bevan:** I'm sorry. It's in paragraph 2 in here; that's why I was reading the other one. It's a fair question. Even if it is correct, it's a question of tone. Is that what you're saying?

**Mrs Witmer:** Yes, that's what I'm saying.

**Ms Bevan:** Our position in the brief is quite clear. We look at employment equity as a cooperative, employee-driven model, and so what will make that work is the question. Even if that is correct, does it add anything, and how will it influence an adjudicator or others in making their determination? May I just say that if this were to go into the Human Rights Commission, for example, that would be their frame of reference, "systemic and intentional discrimination," so it's a very good point that you raise that if we are trying to get away from that model altogether, we have to even reconsider what would be the impact of moving it into the Human Rights Commission, because their frame of reference, by statute, is discrimination.

**Mrs Witmer:** You mentioned the confidentiality, and that's been mentioned by many other individuals, the fact that we really do need to protect the individual's rights. That's been a big concern. Can you expand on that further? What problems do you see regarding the legislation, as it's presently structured, for employees?

**Ms Garthson:** One part that we addressed in the brief that we didn't take time for in the oral presentation was that this bill covers public sector organizations that are also covered by the freedom of information and protection of privacy law, and we're not sure that the current bill isn't in conflict.

Getting back to our concerns about having only accurate personal data within the workforce survey results, that's a requirement by law of the provincial and the municipal freedom of information acts.

Generally, from my experience in the workplace, if employees can't trust the employer, almost no initiative will succeed. If the basis for—

**Ms Harrington:** On a point of order, Mr Chair: Would it be possible to get ministry staff to answer that particular point so we could have a clarification on whether or not they're in conflict?

**Mrs Witmer:** That's probably good that we would have that issue resolved. I think there are several places in the bill where there's the potential for conflict with other legislation, and I think that's the concern that's



being stressed by so many individuals.

1100

**The Chair:** Ms Witmer, I apologize, but we won't have time. I'd ask Mr Bromm to come forward and attempt an answer.

**Mr Scott Bromm:** As far as we know, at the present time there isn't a conflict between the freedom of information act and this act, but I can undertake to provide more detail in that area, because I know that is something that is being examined now. The application of the act is a particular issue for, of course, the public sector and the broader public sector. But again, it's being looked at.

**The Chair:** Thank you. We've run out of time. We found your presentation very informative and we thank you for taking the time to participate in these hearings.

REXDALE COMMUNITY MICROSKILLS  
DEVELOPMENT CENTRE

**The Chair:** I invite Rexdale MicroSkills to come forward. Welcome. You have half an hour for the presentation. Please leave as much time as you can for questions from the members.

**Ms Huda Abuzeid:** Thank you. Good morning, Mr Chairman, members of the committee, ladies and gentlemen. I want to thank you for the opportunity to present this briefing on behalf of Rexdale MicroSkills. We apologize for the fact that you did not receive the brief earlier. However, you have it in hand now, and you will notice on the first page a summary of our key points, which we'll be elaborating on later.

My name is Huda Abuzeid. I'm a trainee at Rexdale Microskills. To my left is Patricia Hitchcock, president, Rexdale MicroSkills board of directors.

Rexdale MicroSkills is a community-based training centre providing employment-related skills training to immigrants and racial minority women since 1984.

While we are a successful vehicle for immigrants and racial minority women to gain access to the labour force, our purpose would be invalid if currently there were access to and equity in labour force representation. Therefore, it is on this premise that our organization welcomes the pending legislation, Bill 79, an act which seeks to correct some injustice in the labour force.

As a community-based organization whose primary objective is to enhance the employability of marginalized members of our society, it is our belief that employment equity is a positive step for the designated groups and ultimately the peoples of Ontario. It is a commitment, with positive results, towards eliminating systemic barriers and all forms of discrimination in employment, therefore resulting in an improved quality of life for all Ontarians.

On the Ontario Training and Adjustment Board, training and employment equity, recently legislation was enacted to establish the OTAB, with responsibilities for

the coordination, development and delivery of training programs and services on behalf of the provincial government. We believe, as providers, deliverers of training, that such a board cannot be effective unless the employment equity legislation is also enacted and includes all employers' participation. It must be understood that practices in employment equity are both social and economic assets to Ontario.

The point is that training must be meaningful: It must be tied to employment. However, our experience has proven that social barriers are severe deterrents to designated groups in realizing their full potential, as they are not given equal access to the same opportunities experienced by non-designated members of society.

It is clear that specific measures must be implemented to increase the employment opportunities for members of designated groups. If this cannot be done, we are relegated to a society which openly practises inequality of opportunities in employment.

In response to reverse discrimination and merit principle, many non-designated group members make reference to employment equity as "reverse discrimination" and the use of "merit principle" as the basis by which to operate. We say reverse discrimination does not exist when designated groups have no power, no access and no political voice.

What employment equity is intended to do is to allow for correction of a generation of wrongs. It must be understood that designated group members do not currently compete on a level playing field. This is exemplified by the current underrepresentation of designated group members in the workforce. We believe employment equity is the source by which attempts can be made to achieve a level playing field as it seeks to achieve equity in employment.

When we as immigrants and racial minorities are told that the merit principle is practical and good, our response is that if this principle were effective, we would not require employment equity. There would be more representation of designated groups in the workforce. Immigrants and minority peoples would not be relegated to inequality in wages and poor job retention. It must be recognized that the faces of Ontario are changing and will continue to change. We cannot just continue to do things the way we have always done them. Employment equity therefore is a positive tool by which all employers can begin to utilize a pool of potential employees, who for the most part have been denied access to the workforce.

Finally, what members of racial minority groups are saying is that we have tried good faith, which has not worked. We also understand that good faith cannot be legislated. Therefore, we anxiously await the enactment of the employment equity legislation, which we believe is result-oriented and a positive approach for all Ontarians. Thank you very much.

**Ms Patricia Hitchcock:** I'd like to follow with some specific concerns and recommendations.

Rexdale MicroSkills fully supports the principles of employment equity and the Employment Equity Act. However, a law which is short on requirements and enforcements will lead to uneven and inadequate changes in employment practices.

There should be a strong statement in the act on the positive effects of employment equity on Ontario's mainstream population. Members of designated groups should not be perceived as being done a favour by the government, because in truth and in fact this is not the case. Due to the obvious opposition which would emanate from enactment of this bill, mainstream Ontario needs to be reminded at every level of this process how it too would benefit from this initiative.

Subsections 1(2) and (3) address this entitlement of members of designated groups "to be considered for employment, hired, treated and promoted in accordance with employment equity principles." The words "considered for employment" should be eliminated from these subsections. That members of designated groups should be considered for employment, then hired, treated and promoted in accordance with employment equity principles, only continues to afford unsupportive employers more opportunity to continue using biased methods. Any employer can very easily say that members of a designated group are being considered for employment. The act needs to force employers to give up arbitrary practices and to actively implement change. This is the true meaning of employment equity.

That the act requires that employers implement and maintain employment equity is a future-oriented design, if all things are equal. The uniquely positive aspect of implementation and maintenance of the act is that employment equity is everybody's business and everyone in the workforce has an opportunity to be a part of the process at all levels.

However, employers and all employees need to be constantly reminded of the importance and seriousness of this act. With this in mind, the following recommendation is made: The employer, in partnership with the bargaining agents and employees, shall develop a policy statement with respect to the employer's commitment to employment equity. This statement, along with the rationale for it, shall be clearly posted in the employers' workplaces, in full view of persons at the employers' workplaces and those who might visit there from time to time. An ever-present reminder such as this, coupled with actions which exemplify it, will serve to acclimatize, as well as reduce the apprehension of, employers as well as potential employees.

1110

Granted that collection of data is a major part of the employer's obligation, the act needs to address the potential for an employer and/or employees to use such

data to work against implementation of employment equity. Consequently, a clause with the following message should be included in the act: Every employer shall, in accordance with the regulations, continue to collect data and workforce information for the advancement of employment equity in the workforce. This way an employer would be discouraged from using data collected for workforce analysis to sabotage implementation of employment equity.

One can foresee the need for employers to exercise a review of employment equity policies and practices. This system of internal checks and evaluations will serve to keep employers and employees current with the progress of their plans and better able to make adjustments when and where necessary.

That the employer is required to prepare an equity plan puts control of the process in the hands of the employer with respect to what goals and timetables can be attained based on workforce information collected. More stringent and direct guidelines should be developed in this area to ensure implementation of the act.

The regulation which governs this act should contain more specific directives for employers. With the existing "We trust that you will do your best" type of approach, it is like we are leaving the fox to guard the chickens, to use a colloquial expression. If we are to see any shift from the status quo, the regulations need to be more directive and precise. Employers need to know that positive results are expected and not just hoped for.

Section 11 prescribes employment equity as being good personnel planning, a tempting idea for most employers. However, subsection (3) states that, "The commission may require the employer to file a copy of the plan." Leaving this step open to being a possibility does not lend credence to the goals of this program.

The commission should routinely receive a copy of the employer's employment equity plan. This would eliminate the possibility of an employer operating without a plan. Then, if that employer is identified as not being able to attain employment equity, the employer would not be able to develop a plan designed to fit the failure.

Section 12 states, "Every employer shall make all reasonable efforts to implement the employer's employment equity plan..." etc. This clause should read, "Every employer shall ensure the implementation of the employment equity plan." The proposed wording is arbitrary and whimsical and further allows the employer comfort in perpetuating systemic discrimination in recruitment, hiring and promotion of the designated groups.

With respect to subsection 13(3) of the bill, as is the case in section 11, if a new plan is filed, a copy should routinely go to the commission. Subsection 13(3) should read, "The commission will require the employer to file a copy of the revised plan."



Section 14 addresses the joint responsibilities of employer and bargaining agents. It acknowledges that both parties have a vested interest in employment equity and therefore should work together for the common good of the workplace. The employer needs to be abreast of all developments on employment equity as they occur. Also, relevant information should be passed on to employees with the intent to educate and inform.

Good faith cannot be legislated. However, since the parties engage in other bargaining processes, this can be useful in coming together in the formation of a policy and a plan in employment equity. Consultation with employees by employers is necessary and should proceed as outlined in the regulations. Development, implementation, review and revision of the employment equity plan should be part of the flow of information between employers and employees.

Maintenance of employment equity records and submission to the commission are a continuous process and need to be well streamlined for continued success of the program.

Section 19, as it applies to exemptions, is consistent with the implementation rules of section 20.

To ensure the efficient operation of an employer's employment equity plan, there must be a rigorous mechanism by which an employer's fulfilment of obligations is monitored. A process which actively checks and evaluates an employer's plan implementation is therefore necessary. In our view, it is imperative that the Employment Equity Commission conduct random audits of employers to determine whether or not obligations are being followed.

Section 22 needs to contain a clause which would indicate scheduling of audits, how often and why they would be undertaken. Is it that the commission would conduct an audit if there were suspicion that an employer was not complying with part III or if there were evidence that the employer was not complying with part II or if the employer had not submitted a plan? Would audits be conducted randomly? Also, would it be possible for an employer to be audited more than once in one decade? More clarification is needed in this area.

Since employers shall develop their own employment equity plan, setting their own goals and timetables, we make the following recommendation: The act should contain some incentives for employers which would encourage them to implement this change.

That the only incentives for employers to implement employment equity are to avoid punitive measures sets a naturally hostile environment for implementation. Employers need to be encouraged with some benefits, such as tax breaks, for example.

That the commission may endeavour to settle with the employer such that compliance is ensured is appropriate, since the goal is compliance, not punishment. If it can

be attained without much resistance, then that is the path that should be taken.

Section 24 indicates that the commission has the authority to confront and act on the offensive if an employer is not seen to be moving ahead with implementation of employment equity.

Missing is a clause addressing consequences if an employer fails to pay the penalty and if an employer is repeatedly delinquent in complying with section 35, 36 or 37.

Though the draft regulations address many technicalities which are not detailed in the act itself, there is still much room for improvement of the structural design of this document. Some of the wording in the regulations is very weak. For example, subsection 14(3) reads, "The employer may identify the employer's employment policies and practices." We propose the clause should read, "The employer shall identify the employer's employment policies and practices." Such a major part of the process of elimination of systemic discrimination should not be left to the employer's discretion.

Regulations should give more room for the commission to be able to enforce equity plans and penalties given to those who do not comply with the act. As they stand, the regulations make it almost impossible for the commission to efficiently and effectively enforce penalties. If fairness continues to be left to the initiative of the employer, we have no hope that employment equity legislation would be meaningful.

Amendments to the Human Rights Code such that the Employment Equity Act shall be deemed to be a special program fortifies the act. The amendments strengthen the argument that the Employment Equity Act does not duplicate the Human Rights Code but extends beyond the reaches of the code. Whereas the code does not direct an employer to look at the employer's process in recruitment, hiring and promotion, the Employment Equity Act will ensure that this does take place.

In closing, I'd like to call your attention to the fact that for 10 years Rexdale MicroSkills and similar training programs have successfully developed and maintained relationships with hundreds of employers. For many of these employers, their involvement with the training programs mandated to train and find employment for equity groups has been an educational process which ultimately leads them to view the hiring of equity groups as a positive experience which benefits the companies.

Since we do not apparently have the luxury of engaging in a 10-year educational process with all employers, we strongly recommend revisions which would hasten the process of attaining employment equity through a bill with more specific directive wording. Drop the "shoulds," please, and make them "we wills" instead.

**Mr Curling:** Thank you for your presentation. I know how difficult it is to put a presentation together on such short notice, as you said, but it is here and it is quite precise.

I just want to focus a bit on your recommendation 5, because I seem to agree with you and other people have come and agreed with you. I'll just maybe take a second or so to tell you my concern.

The legislation which was introduced was considered to be rather weak and vague. Therefore, the government of the day decided to put a regulation in place to define some of those gaps that it has obviously seen. I don't know if it was intentional to make regulation be the one that supports the legislation. That's what regulation is all about.

My concern about regulations, though, is that if you put a case to court and the judge is going to make a decision, he makes a decision on the legislation, not on the regulation.

Do you then see that, even though the regulation, which is not debatable in here, as the government would want us not to do that—would you not see that most of what is in the regulation of the one-shot—maybe the bureaucrats didn't get it right the first time, the legislation. What they got right or so forth, what is in the regulation, should have been in the legislation. Would you feel more comfortable with this bill if most of what's in the regulations would be in the legislation?

1120

**Ms Hitchcock:** I think what we're trying to focus on here is the context that the legislation would be used within. Regulations are the context, right? Those are the things that set the tone, and that's what we're asking for primarily, that a very strong position be taken, that we don't focus so much on what would be nice in the best of all possible worlds but that we say very strongly to the employers what's expected of them.

**Mr Curling:** But the regulations specifically define who is an employer and define who is a visible minority.

**Ms Hitchcock:** What's expected, yes.

**Mr Curling:** It's not very much so in the legislation. I'm saying that we want a very strong employment equity, that people have no confusion about the direction of where employment equity will be going in regard to employees and employers and even the government in support of that cause. Do you have concerns? If you had a chance, an opportunity, to read the regulation, wherein some of those things—my question is that—

**Ms Hitchcock:** How specific they are.

**Mr Curling:** Yes. Would you like those specific things that are in the regulations to be in the legislation?

**Ms Hitchcock:** I believe it would be more effective if it was very clearly defined. I find that from a bottom

level up, the more specifically things are defined, the more clearly understood they are and the easier it is for people to implement them. I know there can be some backlash from that. I'm concerned about that.

**Mr Curling:** The last point you made about the Ontario Human Rights Commission, I have a bit of concern about that. I would like to see the Human Rights Commission as being one of the strongest laws we have in this country so that when human rights have been violated it can be redressed there. As a matter of fact, in the courts it supersedes even the law of the day. The Human Rights Code is the one in which guidance is done, within the code, if one comes to the Human Rights Commission to have a concern redressed. You ask here, and do you want to make some comment, that the Employment Equity Commission law supersede that. Are you saying it's stronger than the Human Rights Commission?

**Ms Hitchcock:** No, our understanding is that the Employment Equity Act is a special program that fortifies the act. It deals with a specific thing. It doesn't supersede it. We feel that it would help to make the Human Rights Code more effective.

**Mrs Witmer:** Thank you very much for your presentation. It obviously reflects the personal experiences that your members have had and raises some very good issues. You mention the fact that there needs to be some change, I think, to the preamble, and you mention the fact that there should be a statement about the positive effects of employment equity on Ontario's population. What type of statement? Have you given any thought to the wording of that at all?

**Ms Hitchcock:** Not specifically. Lynn and I were talking outside before we came in, and it goes along with our experience within the training program, that given that within a very short period of time 50% of the population in Toronto is expected to be immigrants, we believe that if employers are forced to experience the positive effects of not ignoring 50% of the potential workforce, they'll begin to automatically look to this 50% for the labour that they require and to consider this 50% as potentially trainable, potentially promotable.

No, we haven't thought about specific wording.

**Mrs Witmer:** You mention the 50%, and certainly the figure we're hearing is that eventually 80% of the people coming into the workforce will be from those four designated groups. So there are certainly going to be some changes that take place.

You make reference here to mainstream Ontario. Again, who are you referring to? I asked someone that yesterday, because I'm never quite sure who mainstream Ontario is.

**Ms Hitchcock:** I suppose persons of privilege. Speaking from a personal perspective, if we're suffering from systemic discrimination as women or as physically



challenged people or as visible minorities, it's because the system is designed around a particular model. There are particular people who work well within that model and other people who don't. So the people who work well within the existing model who benefit from it.

**Mrs Witmer:** All right. Are you concerned at all about the issue of confidentiality of the individual and their protection? There has been some concern expressed that because of the survey and the fact that the results will be made available to not only the employer but the union and what have you, there is information perhaps that an individual doesn't want to be released any further. Have you discussed that at all?

**Ms Hitchcock:** It's something that as a training program we've been struggling with for years, because we are required to report similar statistics, and it's something we fought against on a person-by-person basis. If it's a matter of collection of data, self-disclosure is very difficult. It's something we've dealt with appropriately and we've dealt with inappropriately as a training program. If it's a matter of non-specific identification of a person, we believe strongly in the issue of confidentiality, but as a training program we've been put in the position of having to counsel people to disclose for the sake of data collection, to make it more truthful, to make it most effective, to reflect the reality. I think that's something employers are going to have to be trained to do.

**Ms Harrington:** Thank you very much for all the work you have put in. It's quite amazing, the amount of hours you must have put in on this.

First of all, I would like to say that you're right on with some of the statements you've made, in the introduction especially here, saying that it's not just employers, it's our whole society. You use the phrase "social barriers" that we face.

I don't know if you were here a few minutes before your presentation. The previous group made this statement, "TEEPA members know that hiring and promotion in the past was often not based on qualifications or merit," when they were addressing that question that has been raised throughout the last two weeks about the merit principle. They go further to say that they see "no inconsistency between hiring and promotion based on qualifications and this act." I hope you would agree with that as well, and I think you did say that.

You did say something very profound here, "Reverse discrimination does not exist when designated groups have no power, no access and no political voice." I think that really says it all.

You talked about in your experience with many employers in the past while, over 10 years, this is a very positive experience for them. I'm presuming that most, or at least some, of those employers are small employers with 100 or less or 50 or less employees.

**Ms Hitchcock:** Many, many of them.

**Ms Harrington:** Would you feel that they should be subjected to this act and that it is only fair that in some way this policy affect all employers and employees?

**Ms Hitchcock:** This is something we've talked about a lot. It's got to be a graduated process. It's going to be an awful lot harder for a company with five employees to follow the same time lines as a larger company. It's a process of education, and I believe that it has to be done, and just because it's a company with five employees doesn't mean that they're not going to practise inequitable hiring practices or inequitable promotion practices. The same regulations and legislation ultimately have to apply to everyone.

**Ms Harrington:** So they will actually see probably the benefits to other companies and then it will become part of their process.

**Ms Hitchcock:** I think that in practice, though, it's been my experience that smaller companies probably change their attitudes faster. If, for example, a company's got five employees and they do break some barriers and happen to hire women who they didn't hire before or visibly challenged people who they didn't hire before or people from a particular group—

**Ms Harrington:** So there's more openness.

**Ms Hitchcock:** —the employer changes their attitude much more quickly, because that's 50% of their workforce.

**Ms Harrington:** We've heard one group this morning talk about seniority as a barrier. Do you see that as a barrier?

**Ms Hitchcock:** I think that's something, in the employment equity consultation that I was involved in last year, that's a real concern for the groups that are going to benefit most from employment equity. They don't want to see people losing their jobs or being sidestepped for promotion to their benefit because they know they're the ones who are going to suffer the backlash.

**The Chair:** I want to thank you both for coming today and participating in these hearings.

1130

#### ANTI-RACIST MULTICULTURAL EDUCATORS' NETWORK OF ONTARIO

**The Chair:** The next presentation, Anti-Racist Multicultural Educators' Network of Ontario. Welcome to all of you. Dr Ijaz, are you the spokesperson?

**Dr Ahmed Ijaz:** I will make the presentation and we'll all be available for answering the questions.

**The Chair:** Fine. You have half an hour for the presentation. Please leave as much time as you possibly can for questions.

**Dr Ijaz:** My name is Ahmed Ijaz and I'm the president of the Anti-Racist Multicultural Educators'

Network of Ontario. On my extreme right and on your left is Dr Ken Ramphal, next to Dr Ramphal is Beverley Saskoley, on my right here is Anise Waljee and on my left is Jacqueline Jean-Baptiste. We thank for this opportunity to appear before you as a group.

The Anti-Racist Multicultural Educators' Network of Ontario is an organization committed to the implementation of anti-racist education in all education systems throughout Ontario.

We are proud of our advisory role with the Ministry of Education and within the broader community on issues critical to the continuing development of Ontario as a province where equal rights and justice are truly meaningful concepts that play themselves out in people's daily lives.

In February last year, in our initial brief on Working Towards Equality, we congratulated the government for the introduction of Bill 79. As educators, we are acutely aware of the need for significant change in the workforce in Ontario's school systems, and the educational system as a whole, if they are to be more representative of the diversity of our province's population and are to serve the needs of the society as a whole.

We believe it will be necessary for the government to strengthen a number of the provisions of the draft bill and its regulations in order for it to be truly meaningful and an effective law. We also believe that the government must implement the recommendations of the Task Force on Access to Professions and Trades as a critical accompaniment to the employment equity legislation.

In general, we believe that it is critical that many provisions outlined in the regulations be part of Bill 79. Goals and timetables need to be in the act itself, as should barrier removal and positive measures and plan content requirements.

The related legislation to Bill 79 is Bill 21, and I won't give you details on that. That legislation very sketchily covers the requirements for school boards to implement anti-racist education policies and an employment equity action plan for designated groups.

We believe that school boards must immediately be given clear direction as to how the requirements of Bill 21 will be woven into those of Bill 79 and its regulations. As we sit here today, we understand that the Ministry of Education and Training is waiting for direction and holding back legislation in abeyance as Bill 79 proceeds through the House.

We are concerned that the "small employer" definition excludes many private sector employees. In the province where racial minorities are concentrated, this will lead to disparity in application. We believe that the "small private sector" designation should be removed and there should be no exemptions for any employers. We don't feel that there's any need for government to identify any broader public sector employers as small

employers and subject them to less stringent employment criteria. It is critical, we believe, that government illustrates that equity legislation applies equally to all of its related bodies.

It's also our position that subsection 13(1) of the draft regulation requirement that workforces be surveyed within nine years is inadequate to track progress. We recommend that this provision be amended to require a new workforce survey within three years, and that's because our workforce is rapidly changing.

Subsection 14(2) needs to be revised to omit the exemption from re-examination of specific employment practices for small employers.

Part IV of the regulations we believe is fraught with language slippage. We question the use of the term "reasonable progress" in subsection 19(1) and recommend the deletion of the words "that constitute reasonable progress," so that the employers' minds are concentrated on employment equity plans with measurable results.

We also question clause 19(1)(b) and the intent of the phrase "to the greatest extent possible," and would recommend its deletion. Concepts like "greatest extent possible" only provide a vehicle for excuses and delays. As educators for equity, we are all too aware that there will be tremendous resistance to Bill 79 and its regulations, and to Bill 21. Passing legislation which contains vague language will serve to encourage those employers who would resist the law or the intent of the law.

We also believe that there needs to be consistent use of terminology between the bill and its regulations and we support the term "positive measures."

The achievement of goals and timetables needs to be there to ensure accountability. There should be no exemption for small employers. These would encompass an action plan which includes dates for barrier removal and dates for implementation of positive measures as well as timed monitoring mechanisms towards the achievement of goals. There need to be specified goals for recruitment, entry and internal movement. The whole section 24 needs to be revised to make clear the understanding of database requirements for goal-setting and to clarify the commission's role in providing data.

The provisions of both the draft bill and the regulations are deficit in their approach to information-sharing. We believe that the consultation process for unrepresented employees must be more clearly outlined and strengthened in the regulations. Section 36 needs to be reworked, since the wording as presently constituted makes unrepresented employees vulnerable since it requires them to seek information about the consultation process and the plan components themselves. We are alarmed to see the lack of provisions regarding the rights of individuals and groups to launch complaints about the plan. This needs to be rectified.



There's a need for restitution of salary disclosure to apply to some employees only. This is regulation subsection 42(2) and it's also under sections 46 and 47. We recommend that this section be amended to read "all public and broader public sector as well as private sector employers." There's a need for concrete information about salary levels to reflect a true picture of where designated groups are positioned in the salary structure of an employer. We have good reason to believe most are concentrated at the lower end.

1140

The exemptions contemplated in section 19 of Bill 79 need to be struck from the act. No employer, public sector or private, should be given credence in attempts to avoid responsibility for the achievement of a diverse workforce.

In terms of implementation, the time lines outlined in section 20 of the act are far too long. We believe no employer should have longer than two years to post a first employment equity plan.

Audit and enforcement by the commission: This section of the act must be strengthened. The commission should regularly conduct audits of a variety of employers as one of its prime enforcement duties.

The act and its regulations should give more specific direction in the need for employment equity plans to address those employees who experience a double or triple disadvantage by virtue of being, for example, female, a racial minority and disabled. Special measures should be outlined which will assist in finding remedies to address the enhanced inequities experienced by these employees.

We also support the concept of including lesbians and gay men in the preamble to the legislation and its barrier elimination and positive measures proposals.

The concept of complaints about discrimination by individuals cannot be compromised by employment equity legislation. There must be amendments to allow individuals to make complaints about discrimination both under the Ontario Human Rights Code and the Employment Equity Act.

We believe that, through Bill 79 and Bill 21, Ontario is poised to become one of the most forward-looking locations around the world in addressing workplace inequities for its own wellbeing and the wellbeing of all its residents.

However, this will only be accomplished through the strengthening of many provisions of the act and its regulations. Clearly outlined and enforceable requirements are necessary to give the legislation a breath of life and many designated group members a spark of hope. To do less will make this initiative a travesty.

**The Vice-Chair (Ms Margaret H. Harrington):** Thank you. Each party will have approximately six minutes, and we'll start with the third party.

**Mrs Witmer:** I see here that you represent 30 boards of education, the teachers' federation, so you're quite a wide umbrella group.

**Dr Ijaz:** Our membership comes from 30 different school boards and the other institutions listed. We do not represent the boards themselves but our membership is affiliated with the boards. We don't speak on behalf of the boards but we do speak as a body.

**Mr Norman W. Sterling (Carleton):** How many members are you?

**Dr Ijaz:** About 130-plus right now.

**Mrs Witmer:** So it's a voluntary association.

**Dr Ijaz:** Yes. It's an association of educators who work in the area of anti-racist education within the school boards or institutions.

**Mrs Witmer:** When did you come into being? When were you organized?

**Dr Ijaz:** In the fall of 1987, I believe.

**Mrs Witmer:** I was involved in education and I wasn't that aware of the organization, so I appreciate your comments. Many of your comments are based on personal experiences that you and your members have had. You've indicated that the bill "be revised to include provisions that would allow for individuals and groups to launch complaints about employment equity plans." How would you like to see that changed specifically? That's your number 8 recommendation. How do you feel this bill is lacking at the present time in prohibiting individuals? I thought there was some avenue there for that to happen.

**Ms Beverley Saskoley:** I'll respond on behalf of the group. We think it's more a lack of language that makes it very clear that individuals do have the right. There is not clear enough direction that says if a designated group member is opposed to the employment equity plan that has been set up in their workplace, they will have a clear right to follow up on a complaint about that plan. We don't think it's specific enough to suggest that the individuals have that right, or groups.

**Mrs Witmer:** There seems to be a bit of a conflict. Yesterday we had the Ontario Secondary School Teachers' Federation here and it was somewhat concerned that individuals would have the right to launch an appeal as opposed to the union. What is your feeling? I think they felt the union should be the one that had the opportunity and not the individual.

**Dr Ijaz:** Historically, there may be a little conflict between what unions want and the rights of the individuals who believe that individuals should be allowed to make that appeal, should be able to complain, because unions don't always speak on behalf of that discriminated individual.

**Mrs Witmer:** We actually had two experiences yesterday of teachers here where that indeed did happen,

that they didn't feel they were well represented and wished to represent themselves.

You've made a good point here. The Task Force on Access to Professions and Trades in Ontario is a document that has excellent recommendations contained within it and certainly the government should be giving very serious consideration. I know within my own community there are many people who are simply not able to access the professions and trades because there are many barriers at the present time. Something certainly needs to be done.

You indicate that Bill 21 needs to be woven into Bill 79 and its regulations and that school boards really are waiting. What do you see happening there? I think school boards do have a very important role to play and much more needs to be done.

**Dr Ijaz:** Our position has been, with the Ministry of Education and Training, that they didn't really need to wait for Bill 79 to become law because the precedents within the Ministry of Education were the school boards were required to implement employment equity, or what are called affirmative action plans, for women only. Since the legislation was changed last year and got royal assent in July 1992, the minister had sufficient power to move ahead and broaden that base to ask school boards to implement holistic employment equity plans.

In a way, Bill 79 has been an impediment in terms of achievement of the goal because the Ministry of Education is waiting because it doesn't want to do anything which may be in conflict with Bill 79. But we believe it can be done without being in conflict with Bill 79, because people don't really want to wait.

**Mrs Witmer:** Okay. You've indicated there should be no exemptions for any employers. Are you suggesting that someone who employs only one employee—what exactly is your definition there? Somehow it seems unreal to suggest that someone with a workforce of one or two—it would be really difficult to—

**Dr Ijaz:** We can go to ridiculous extremes, but you have a provision in terms of less than 50. That's going to leave out a lot of people and that will become a critical mass in itself: 50, 50, 50 multiplied a number of times. I think that needs to be reconsidered.

**The Vice-Chair:** We'll move on to the government party.

**Mr Derek Fletcher (Guelph):** It was a very interesting presentation, one that certainly will be looked at. One of the things I look at during these consultations is that this is rather unique. This is one of the first times a government has ever attempted to do anything about employment equity and to introduce legislation, and along the way there are certain things that we have to hear from the groups that are presenting, and then we make amendments to the legislation as we go along.

That's where we are right now. Your recommendations are very good and I think they would go a long way to strengthening the Employment Equity Act.

On the linkages between Bill 21 and Bill 79, can you expand on what you mean as far as the linkages are concerned, so I can understand it somewhat?

**1150**

**Dr Ijaz:** Okay. We don't know what kind of linkages the Minister of Education and Training is awaiting right now, because Bill 21 gives the Minister of Education and Training sufficient power to mandate employment equity within school boards. Without any clear direction to the Minister of Education—I don't know whether he has sought that from the Minister of Citizenship or not; he probably has—but just to sit there waiting for Bill 79 we don't think is satisfactory. If there needs to be some collaboration between the two, or some direction given to the Minister of Education and Training so they can proceed without having to wait for Bill 79—sort of paving the way for Bill 79 to come along. That's what we mean.

**Mr Fletcher:** I think what we're looking at also is that parts of Bill 21 could overlap or duplicate what Bill 79 is doing. I agree with you, there has to be a meshing and they do have to link together so they provide a better system.

**Mr Fletcher:** One other thing I would like to touch on is that a lot of people talk about hiring on merit. When I hear it—and I don't think it's intentional that people who are bringing this up mean it the way I hear it. It's that with this act, when people are hiring, they're not going to hire from the designated groups because the people in the designated groups don't have the qualifications and for some reason this legislation is going to force people to hire unqualified people for positions of responsibility. We've seen what's happened in the teaching professions when it comes to principals, positions of responsibility, who are getting these positions and yet merit for some reason is being touted as being jeopardized because of employment equity. Is that a view held by your group?

**Dr Ijaz:** It's interesting, because those folks who are all of a sudden trying to bring to life the whole notion of merit pay don't realize that unwittingly they're subscribing to the theory which one of our professors in this province—I won't mention the name; you probably all know—has been propounding, the superiority of one race. What has happened is that we have given attention to only one section of our population and only one gender. So if you fall into that trap—that group has deserved merit, so therefore that group is superior—we don't believe that is the case. Yes, we do believe in merit and merit is spread all around.

**Mr Fletcher:** That's right, regardless of race or anything else.



**Ms Zanana L. Akande (St Andrew-St Patrick):** I'm most supportive of your recommendations. I want, however, to ask you if you could reflect on the position of the legislation in relation to promotion. Many of us have talked a great deal about what this legislation means in terms of people coming new into a position or doors being opened, but we haven't reflected a great deal on what this legislation will mean for those who are already in the organization and want to move along.

I'm wondering if AMENO has had any particular thoughts on the application of this legislation for that particular population.

**Ms Saskoley:** When we prepared our brief, we tried to indicate in it that there needs to be great attention paid to internal movement, as much as to entry, and that any employment equity plan that does not address internal movement—and by that it might be lateral movement which will enhance promotion possibilities—there will be failures in the employment equity plans unless they address promotion and unless the workforce that's presently constituted or that becomes constituted over time has a great deal of internal shifting so the designated group members become the managers and supervisors in the proportions that they are rightly entitled to be.

**Ms Akande:** Though I agree with your response, one of the things that concerns me is, not many people who have come to this place to make their presentations have focused on the possibilities for promotion and support for that within the legislation, and I'm wondering if you think that, as it's written, it is adequately written to address that particular area.

**Dr Ijaz:** We don't think it's adequate as it is now.

**Mr Curling:** Let me give you an opportunity to expand on that then, because Mrs Akande's question is quite pertinent. Let me talk about the words. "Tenure" is to be the word then. The word "tenure" somehow is about seniority. Would that in any way conflict with the principle of employment equity in promotion?

**Dr Ijaz:** Traditionally, to make a blanket statement, not every employer has gone out to promote people because somebody is senior. The whole notion of merit is not only based on seniority, but the ability to do the job is the one which we believe needs to be looked at rather than just going by seniority, although we do respect the seniority provision. But that cannot always be the only criterion to promote people within an organization or without an organization.

**Mr Curling:** I don't want to take it in isolation. Let us take the concept that all those who will be promoted are qualified, and that's all. The merit is out of the way. It is enshrined in the legislation that that will be considered. Merit is in. It's all the people who want to come in and all those who want to go up are qualified people, but within the organization what we see is a strata of

people who have tenure or seniority. The only problem is that they are the same age that I am so therefore I have to wait on them to either leave, die or whatever access they want to go. Therefore, it is placed as an encumbrance in moving up. I don't want to only believe that. I want to see if you have examined that and see that as a hindrance to or in conflict with the principles of employment equity in promotion. Do you see that?

**Dr Ijaz:** It's only a hindrance if you take that into consideration, and it's a matter of how much rating one is going to allow to what factor when you're considering people for promotion. Longevity itself does not make someone more able to do something, because there are other criteria which need to be looked at. Yes, longevity in the place may be one factor. I think, personally, perhaps some rating could be attached to that, but that cannot be the only criterion.

**Mr Curling:** I fully agree. You said sexual orientation should be included in the legislation. Do you see francophones as another group that should be included?

**Dr Ijaz:** No, I don't, because looking at even the current government structure—I don't have any statistics available and I believe there are—my personal information is, looking at the Ministry of Education and Training, for example, the francophones are there in twice the numbers compared to what the main numbers would warrant if the merit principle was in place. However, that is not represented in terms of racial minorities and other designated groups. This is personal information. I don't have any data to base that on.

**Mrs Jacqueline Jean-Baptiste:** If I take the example of the Ministry of Education, we see that francophones are represented federally in the Constitution to protect them and they have a ministry of francophone affairs here. However, they are the white francophones everywhere; so if you are francophone and you are double of another minority you have to put yourself in that group to get a voice, because when they're talking of francophones they don't see people with that double minority. At the Ministry of Education now, I think there is one francophone who is not white. This summer, they're trying to get one. They get one.

**Mr Curling:** So there is a problem in terms of the—

**Mrs Jean-Baptiste:** A major problem.

**The Vice-Chair:** Our time is up. Thank you for coming. The committee will adjourn until 1:30.

*The committee recessed from 1201 to 1333.*

COALITION OF VISIBLE MINORITY  
WOMEN (ONTARIO) INC  
CONGRESS OF BLACK WOMEN  
OF CANADA—TORONTO

**The Chair:** I invite the Coalition of Visible Minority Women to come forward and make its presentation.

**Ms Joan De Peza:** Do you want all of us up here?

**The Chair:** Yes, there is just fine.

**Ms De Peza:** We're not used to such protocol.

**The Chair:** That's all right; we're informal as well.

**Ms Fleurette Osborne:** Joan and I are presenting this paper on behalf of the coalition and the Congress of Black Women of Canada, specifically the Toronto chapter, which is one of 23 chapters across the country.

The congress was founded in 1980 as a national organization, but before that there were some ad hoc organizations. The purpose of the organization was, and still is, to improve the welfare of black women and their families in their local communities and nationally and to clarify and bring due recognition to the role of black women in Canadian society. We have been lobbying for equality rights. That's really the thrust of our business.

Similarly, the coalition, founded in 1983, serves the population of immigrant black women as well.

Both organizations have been involved in the fight and the struggle for equality rights and against racism and sexism in this province.

Many of the people whom we represent are people who experience very high unemployment rates and underemployment as well. Although there seems to be an assumption, when one uses the term "employment equity," that everybody out there who is non-white is unqualified, most of us are qualified but are operating below our skill levels and our knowledge levels.

It then becomes apparent why we're interested in this legislation, which we see as very significant for the groups we represent. We see it as significant because the purpose of employment equity is to eliminate the barriers of discrimination and to provide a climate and workforces where there is equity and where people can work according to their abilities and be promoted according to their abilities.

We must apologize that we did not submit our papers before. Unfortunately, circumstances beyond our control prevented that. Anyway, they are available now.

We are really concerned and very disappointed with the proposed legislation. We think it is very weak and will not achieve its purpose and intent, which is to ameliorate the conditions in employment for the designated groups, which, as I said, suffer high unemployment and underemployment. We feel therefore that the bill should, and it is imperative that it does, include stronger enforcement mechanisms, clear definitions as to the designated groups, requirements to establish mandatory quantitative and qualitative goals and timetables, and broader coverage.

We will emphasize those aspects of the act that concern the people whom we represent.

**Ms De Peza:** First of all, we'd like to deal with the definitions. We submit that designated groups must be defined in the act and not in the regulations.

We believe that the definition of racial minorities

must include identification of the major subgroups to enable minorities to better identify themselves in the workforce survey. Subgroup identification is essential so that when goals and timetables are established all subgroups will be accurately identified and considered. For example, the definition of blacks should specify Africans, Canadians, Americans and Caribbean persons, and southeast Asians should specify Burmese, Laotians, Malaysians, Thais and Vietnamese. This removes the possibility of any one group being ignored. It is important in achieving an equitable working environment for all racial subgroups to be eventually fairly represented. This is the essence of employment equity.

Persons with disabilities should be defined to include persons who are severely disabled or who have work limitations.

The definition of "employer" should be expanded to include related employers as determined under the Labour Relations Act.

**Coverage: Excluded employers:** We note that some small businesses are not covered by the legislation and that others will be allowed certain modifications, for example, with regard to setting numerical goals and timetables—and some would only have to complete certain aspects of the employment systems review. We have serious concerns about this. At least 60% of the people we represent are presently employed by small businesses. It is therefore important that they be covered, especially women who will otherwise continue to face systemic racism and sexism.

#### 1340

Although employers with 10 or fewer employees may find it problematic to develop numerical goals and timetables, more so than would larger employers, we believe that all employers should ensure that systemic discrimination is eliminated from the workplace. Accordingly, we recommend that all employers with 10 or more employees be covered by the legislation.

**Workforce surveys:** These surveys provide indicators on the status of designated group employees and non-designated group employees to identify problems in the workforce, particularly with regard to representation. It identifies whether there is underrepresentation, underutilization or concentration, and where these are located the workforce survey will provide the data to establish goals and timetables for an employment equity program.

The act requires the employer to complete the workforce survey in accordance with the regulations. We believe and submit that the requirements for this audit should be included in the act, as this is an essential element of the employment equity program. We contend that there should be a high degree of consistency in the information required in both the audit and the survey and that the commission should specify these requirements for further evaluation and monitoring.



We therefore recommend that the commission specify the requirements for the workforce audit and that these be included in the legislation; for example, things like salaries, occupational levels, hires, promotions, transfers, termination and training.

Similarly, we recognize that some employers have voluntarily, or through the federal contractors' program, completed workforce surveys. I guess the question remains whether or not they should be required to resurvey and reaudit or look at their audits again. We believe they must do so to ensure consistency and compliance with the employment equity legislation of Ontario. The commission should provide guidelines so that employers can determine whether they need to, or how they may, reconcile their former surveys and audits. These guidelines should be no less stringent than those required in the federal legislation.

We recommend that the commission provide a set of guidelines for those employers who have already completed their surveys and audits to ensure compliance with the Employment Equity Act of Ontario.

**Ms Osborne:** We will now talk about the mandatory goals and timetables. For the past two decades at least, there have been attempts to implement employment equity in Ontario, including in the public service. We have found from studies or reviews of this process that the progress has been dismal, especially for aboriginal people, persons with disabilities and racial minorities.

As the legislation stands, although it says that there should be goals and timetables, the standards are not included in the legislation and the requirements that would lead to these mandatory goals and timetables are not included in the legislation. We see that as a great fault in the legislation, because if the goal setting is left to the discretion of the employers or to their reasonable efforts, then what we have is exactly what we've had for the last 20 years, and that has done nothing to enhance the situation of the most disadvantaged designated groups in this province.

Therefore, we are suggesting that the standards be set by the commission and that they be included in the legislation so that they can be benchmarks for measurement. That's one point.

The other point is that in order for consistency, and also for monitoring and evaluation eventually, the commission should also provide the baseline percentages on which the goals should be set. I'm not saying it sets the goals for the employers, but it provides the baseline information on which they can set their goals.

So we are recommending that the goals be both quantitative and qualitative—at least we are reinforcing that—and that the percentages be provided by the commission, and also that the formula for determining the goals be provided by the commission.

Along with the workforce survey and audit, the

employment systems review is another essential part. In fact, what we are saying is that all of the essential elements which go into the employment equity process and developing an employment equity plan should be in the legislation and not, as they now are, provided for in the regulations.

Similarly, with the employment systems review, that is also a very essential element of the employment equity process, and we are suggesting that again the requirements, even if it's just a checklist, be indicated in the act. We must realize there are some employers, even some of the more sophisticated ones, who keep telling us they don't know what the employment systems are. So we need to identify them in the legislation. As a result of the employment systems review, we reiterate that there should be positive measures which would be required to remedy whatever the problems are that are identified when the reviews are done. There's a list in the text of the kinds of systems that we think should be included.

That brings us to the next process, which is the employment equity plan. We're also saying that identified in the legislation should be those elements which go to make up an employment equity plan, so that everybody knows and everybody follows them and that they be not relegated to the regulations.

We are also saying that we do not agree that a certificate is enough to ensure that the employer has done what he or she should do. In fact, what we are saying is that the plan should be submitted to the commission and that in fact the commission should issue the certificate indicating that the plan meets the requirements and therefore the employer can proceed.

The act makes provision for joint responsibilities and refers to the bargaining agent and management. We're suggesting that this is not enough, that there should be employment equity committees set up by every employer. These employment equity committees, though they include management and labour, should also include members of the designated groups. Rather than have their concerns filtered through a third person, they should be there to articulate their concerns themselves.

In the case of non-unionized workplaces, we are suggesting that there should also be committees, and these committees should be selected representatives of the various job levels or occupational groups. The nominations should come from the employees themselves, and this group should work with management on the implementation of the employment equity program.

**Ms De Peza:** The next item I want to deal with is enforcement. We think it's imperative that there be strong enforcement measures to ensure compliance with the legislation. The commission must therefore be given the adequate financial and human resources to be able to monitor and evaluate the progress of the employment equity strategy of Ontario on a regular and routine basis.

The monitoring may be staggered so that there is some balance to the workload. In addition, we believe that advocacy groups must play a major role in monitoring the progress of the program as well as serving as third parties in complaints brought before the commission.

1350

**The Chair:** There are 10 minutes left; three minutes per caucus. I leave it to you to decide what to do.

**Ms Osborne:** There are only a couple of other things and we can say them very briefly.

In regard to the advisory councils, we are recommending that the advisory councils be representative of the designated groups as well as labour and the employers.

In terms of the commission, we are also suggesting that instead of saying that "one or more" members may be appointed, a specific number of members of the commission should be identified. An example, say, is the OTAB legislation, where it sets out the number of members for that board as well as the breakdown of representation.

We also are recommending that there be a vice-chair to the commission.

We are also recommending that the commission be represented as well as the tribunal.

There is one concern which we have listed under addendum, and that is our concern of the impact of the social contract bill on the proposed employment equity legislation. We understand that section 44 gives primacy to the Social Contract Act. It excludes the Ontario Human Rights Code and the pay equity legislation.

We see employment equity as a right and not a privilege, and as an extension of human rights as somewhat defined by the code, moving from the individual to group rights. Since this is how we see it, we are suggesting that the same primacy be given to the proposed employment equity legislation—or the exception, whatever you want to call it, but we're saying primacy—as the Ontario Human Rights Code and the pay equity legislation.

**Ms De Peza:** In concluding, aboriginal people, persons with disabilities, racial minorities and women continue to be disadvantaged in society because of traditional attitudes and systemic discrimination towards these groups. Simply put, it is because of who we are. Throughout the debates and deliberations regarding employment equity, these remain the underlying issues of resistance to the proposed legislation. For this legislation to be realized, all essential elements of employment equity must be taken out of the regulations and placed in the act.

**The Chair:** Thank you. I will allow one question per caucus, because that's all we will have time for.

**Ms Carter:** Thank you for your very strong presentation. I'm interested to see on page 6 of your document you state that subgroup identification is essential. This

has been mentioned by a few groups. I'm just wondering how you would come up with the numerical goals on this basis, especially since some employers are small and you are also emphasizing that small employers should be included in this legislation. Also, there are some areas where visible minority people are, in total, quite a small percentage of the population. So I'm just wondering how this would be implemented.

Also, I think that what we're trying to do in this bill is to bring about a change in attitude and that the four designated groups are really a tool for doing that. Obviously, people are discriminated against for other reasons. So I'm just wondering how this would work out if we did in fact identify subgroups.

**Ms Osborne:** The identification of the subgroups serves several purposes. We do recognize that certain numerical goals may be problematic because the cells may be very small: you may end up with half a person, and you can't have a goal for half a person.

**Ms Carter:** Or a fraction.

**Ms Osborne:** But that's not the only aspect of employment equity. One of the ideas is that there is better identification, better self-identification of the individual so that people know who is meant by "racial minority," so that, say, southern Italians or Europeans or whatever may not see themselves as part of a racial minority simply because they may be darker than the northern.

The other reason is that in the workplace itself, and this is our experience, there is a tendency to exclude some of the groups, whereas you include some other groups. We're saying that this is not fair, this should not have happened, and therefore, if they are identified, then if it's feasible to set goals, you can set goals on a much broader basis. So those are some of the reasons.

**Mr Curling:** I think you are one of the first groups that has identified that the social contract may have an impact on employment equity. I'll give you an example. The Police Association of Ontario has just been denied a certain transfer of funds from the government which was so committed to employment equity, therefore disallowing the Police Association of Ontario to carry out some of its changes and put things in place. I want to say to you too that when employment legislation is in place, the government and the opposition must be committed to that kind of a change, especially so the government, which is going to flow that money; especially so the government which is in charge of the funds to make these things happen. You cannot demand of an association which is funded by you and then not demand the same thing of the private sector. So they've got to be consistent, and I want to commend you for making that observation.

**Ms Osborne:** I don't want to get into a political debate.



**Mr Curling:** You don't?

**Mr Callahan:** Feel free.

**Mr Curling:** Go ahead. It's what it's all about.

**Ms Osborne:** There is an impact. It was also brought to our attention that there has been, as part of some negotiations—I won't say which group—exemptions or an opting out from the employment equity program, and we think that's really disastrous.

**Mrs Witmer:** You indicated here that it's because of who you are that you have certainly not been able to access some of the opportunities that should have been made available to you.

Just to follow up, we read yesterday in the newspaper, for example, that in the teaching profession no new teachers are going to be hired for the next three years. So obviously any attempt to implement employment equity in the school system, which is absolutely essential, is not going to take place as quickly as had been perceived it might.

You indicate that the commission must provide the percentages and the formula for determining the goals. How do you envision the percentages being arrived at?

**Ms Osborne:** That's an exercise that the commission will have to carry out with Statistics Canada and a whole lot of other institutions in order to arrive at some reasonable percentage for each of the designated groups.

**Mrs Witmer:** Okay. So you hadn't discussed that at all within your organization?

**Ms De Peza:** It is quite easy to even imagine that the commission can extrapolate from the Ministry of Consumer and Corporate Affairs a list of all employers and, based on the statistics like Statistics Canada, come up with some kind of formula for a geographical area. It's based on demographics; it's based on the immediate population. Employment equity is to meet the needs of various communities across Ontario, and I don't see that this is too much of a problem. We have statistics and research of all kinds going on which could give us that information. I have no difficulty with imagining that the commission, through some order in council, might get some assistance from other ministries that can provide that kind of information. So that's really not an issue.

**The Chair:** Thank you for the presentation and for participating in these hearings.

1400

KYLE RAE

**The Chair:** Welcome, Kyle Rae. You have half an hour for your presentation. I hope you will leave plenty of time for questions and answers. We are noticing that people are spending more time in their presentation, leaving very little time for questions.

**Mr Kyle Rae:** I will do the opposite.

As you may know, I'm a city of Toronto councillor, and I'm not here in that capacity. Before I became a

city councillor, I was employed at the city of Toronto, so I've been quite familiar with the employment equity program at the city, which was implemented in 1985. I began working in 1986 for the city, as an employee, and I became a manager at the 519 Church Street Community Centre, where I had to implement employment equity. Now at city council I'm a policymaker and we continue to work on our employment equity program.

I collected the information to implement employment equity at the workplace where I was. I reported this information to the city so they could construct the numerical information. I've negotiated with unions and hired and fired and advertised and disciplined under employment equity guidelines.

I congratulate the government in moving forward with this legislation. There may be those who feel it doesn't go far enough, but it is so similar to what the city of Toronto started to do in 1985 that I think this is an excellent starting-off point, and there will be ample time, I believe, to make adjustments to it to make it a better piece of legislation.

But I'm not really here to look at the way in which it's implemented in terms of numerical or those kinds of implementation issues. I just want to make it very clear that in my experience in working with employment equity, it is a painless process. It does not disrupt the workplace if you inform the workplace of why you're gathering this information. The staff work with you, because they understand the issues are important. The concept of merit is not eroded or does not evaporate when you bring in employment equity. It enhances a workplace. It does not erode merit.

I can't imagine an employer hiring someone because of employment equity. You hire them because of their skills, and you look at those other issues and try and change your workplace to make it representative, but when you have a job description in front of you and you're trying to hire someone to fit the needs of that job description, that is what you're primarily looking for.

I would like to support the groups which are found in the legislation as being groups that are being designated as requiring the protection of employment equity. We know that there is a long history of discrimination in Ontario and in Canada, that there are groups that have been discriminated against in employment and in services, and I think the Ontario Human Rights Code is an excellent example of the government seeing this as a problem and reacting to it.

But I believe there is a group that has been excluded from the bill, Bill 79, and I just want to note that in the preamble it says, "The people of Ontario also recognize that people in these" protected "groups experience more discrimination than other people in finding employment, in retaining employment and in being promoted."

I believe that the government would be remiss if it

did not include sexual orientation, that is, gays and lesbians, in this legislation.

We know that gay men and lesbians are discriminated in the workplace. We know that because we're in the Ontario Human Rights Code. If we are protected in the Human Rights Code, why would you not include us in this piece of legislation in terms of employment equity?

We know that the problem the architects of this legislation have been grappling with is the numerical goals. There's a fear that gay men and lesbians will not come out, will not be counted, will not disclose. Well, we know that in terms of disabilities, disclosure is up to the individual. Someone who's got HIV or AIDS, someone who's got epilepsy, someone who's got dyslexia, someone who's alcoholic need not disclose if they do not wish to that they are in fact a disabled person on those grounds. They are grounds of disability, but it's up to them to disclose it. The employer can't say: "I know he's dyslexic. I'm going to check that off on the box." It's self-disclosure.

If you include gays and lesbians in your list, there will be people who will fill that out. There will be others who will not, who will not feel comfortable about it. But at least you begin the process of recognizing that there is a group that has been discriminated against, that there is a glass ceiling for people who are gay and lesbian and that you need to start counting us. I know it's the federal government that really does the counting, but somebody is going to have to start to count us in in your statistics or else you'll never know the proportion that we make up of the population.

If you choose not to go that route because you fear the numerical goals cannot be achieved through a failure to disclose, there are qualitative measures that could be taken. I think if you do not include us in the collection of data, then you must in the preamble recognize that gay men and lesbians have been discriminated in the past, that they have employment issues and that the workplace should be a safe place for gay men and lesbians to work and be promoted and to be represented.

Some of the ways that can be achieved is, the government has promised that in the fall it will bring in legislation on same-sex spousal benefits—there's a clear example of making the workplace an equitable workplace—posting non-discrimination policies that include us in the workplace, anti-homophobia workshops and training of employees—I've been working on that in the Metro police force, going in and doing workshops, and that's making a difference; some sectors of that police force have never been so supportive and understanding of the people they are policing, and there have been changes there—and support and inclusion of gays and lesbians in employee assistance programs so that we can then begin to acknowledge that we do have relationships, that we are people outside the workplace.

If you fail to do this, what you do is replicate a

grievous error that was made when the Human Rights Code was changed in 1986, and that was in regard to the harassment section in the Human Rights Code, subsection 4(2), and excluded gays and lesbians from the harassment clause in the Human Rights Code, which is quite bizarre. You can get into a workplace, but once you're there, you can be sworn at, you can be discriminated against and you have no recourse that your employer or your colleagues have been harassing you. There's no other group in society that's been afforded that peculiar dignity of being able to work and continue to be harassed. I believe the government is interested in changing that, and I note Tim Murphy has introduced his private member's bill which addresses that issue too.

The government of Ontario has a responsibility to make employment accessible and safe for all Ontarians. There are some Ontarians who do not enjoy these protective employment principles. You as a government may find it difficult to quantify and therefore integrate gays and lesbians into the legislation, but your failure to collect this data or your fear that you won't be able to collect this data cannot be used as a justification to exclude us when you know we are victims of unfair labour practices, human rights practices and employment practices. I would ask you to think hard and include us in this legislation.

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**Mr Curling:** Mr Rae, thank you for making that oral presentation. Maybe you could help me clarify some foggy thoughts in my head of what went wrong on the way to bringing employment equity about, since you have worked on it as a councillor and also you're pretty close to the NDP and their thinking in that way. When they developed their private member's bill and Bob Rae presented his private member's bill, it was something that people said had teeth in it. Then we have this employment equity bill. What do you feel went wrong on the road from the private member's bill to now?

*Interjection.*

**Mr Curling:** Oh, you'd like to answer?

**Mr Winninger:** You've got a great opening.

**Mr Curling:** They want to answer over there. You see, they know what went wrong and can tell me.

**Mr Kyle Rae:** Now, now, now. Come on.

When you start looking at legislation and implementing policy, you often come to terms with, how do you implement and how effective can it be? The city of Toronto's employment equity program, in terms of timetable and goals, is voluntary, and for the most part, for 80% of that workplace, it's been an excellent process. I think earlier this year or last year, you might recall, we had some problems with one of our departments, the fire department, in looking at employment equity goals. That is the only department that we feel fell short of those goals and timetables, but every other



sector in that workplace was able to look for its own goals and timetables, set their own, not be coerced, not be told what they had to do, and many of them reached their goals and timetables. They will be reassessed by the city. But it was largely a very successful voluntary program within the city and it worked. You may be referring to whether or not it should be voluntary or—

**Mr Curling:** No, just referring to the fact that the private member's bill seemed to be right on target of what employment equity is about. What I'm referring to is that this one is not. It's vague. It is not precise. It has used regulation in order to define a very weak legislation. That one would have required far less regulation to define the intent. That's what I meant.

**Mr Kyle Rae:** I would have preferred that the private member's bill had been successful back when—I'm not sure when he introduced it. It was 1988?

**Mr Curling:** In May 1990.

**Mr Kyle Rae:** I would have preferred to support it then.

**Mr Callahan:** It was probably an election platform.

**Mr Curling:** It's important. I think you have clarified. You answered my question. You said it was then and now it is now, and as you said, when the reality comes of governing, then we have a different view of things. All I'm saying is that employment equity is quite a very delicate bill to put through, and no one can claim that they've done the greatest thing ever. The Conservatives and the Liberals and the NDP have different views about that.

**Mr Kyle Rae:** My experience is that getting into government there is a great deal of difference being on one side of the table and the other and being able to implement employment equity and deal with the issues. There are some constraining elements that you have to deal with. But this legislation goes a lot further than this province has gone before. It's taken us into a way of thinking that this province in many sectors doesn't want to go. This is the way to go, though, I think.

**Mr Curling:** You said gays and lesbians are excluded. Do you feel francophones should also be included in this?

**Mr Kyle Rae:** I'm not aware if they have been here to depute. I know the minister, when she was here introducing the—

**Mr Curling:** She doesn't attend to these things any more.

**Mr Kyle Rae:** She did mention that, I believe, and there may well be a case if there is in fact a record in this province of failing to hire, to have proper representation, to promote Franco-Ontarians. I'm not aware of that, but there may well be a case for it, and if they feel that there is a case, they should be here before you and making that case.

**Mr Callahan:** I'd like to follow up on that. You've spoken of the bill being enlarged to include gays and lesbians. It's always been a sort of a conundrum for me, because it seems to me that if you're for something, you're against something. That's in a sense what you've got here.

What about the 40-year-old or the 45-year-old or the 50-year-old who, particularly in our economic climate today, has lost his job and goes out to the workplace to try to get another job and they look at him and they say, "Well, you're overqualified." Really what they're telling him is: "You're too old. We've got a pension plan we don't want you to get involved in. We don't want to have to get rid of you to let the young people get up the ladder." Shouldn't they also be included, particularly in the economic environment we've got now where these people are out of work? They're supporting families and can't get jobs, can't get back into the workforce.

**Mr Kyle Rae:** That's not an employment equity issue. I recall, when I came back to Canada in 1981 from studying overseas, I got the same word, I'm overqualified, and I didn't have to be 45 years old to hear that. That's not the issue.

**Mr Callahan:** Maybe I shouldn't have said overqualified. That's what they tell them, but really what they're telling them is, "You're too old; we haven't got a job for you." I would be willing to bet if you did a study of it you'd find an awful lot of them out there. I know, I get them through my constituency office where they in fact can't get employment in this tough economy because they've reached that age and their job has either disappeared, which is a common practice in the province of Ontario—jobs disappear like crazy. Those people are also being discriminated against and they're not being included in this bill, so why should they not also be added?

**Mr Kyle Rae:** I think your issue, Mr Callahan, is not employment equity. It's about job retraining and about employment. What we're talking about here is groups that have been traditionally excluded from equity hiring and promotion and that's not, I don't think, what you're addressing in this question.

**Mr Callahan:** I think men who have reached an age where their job is lost or disappeared and go out and try to get a job have been discriminated against for a long time, not just in Ontario but probably throughout the workforce in the civilized world.

**Mr Curling:** He meant women too.

**Mr Sterling:** I'm interested in your concept of asking for the designation. The bill requires employers to reflect the community in the representation in their workforce. If it's a self-determination as to whether you fall within the designated group, I think you have said that some would and some wouldn't include themselves in that group. If the community—any particular commu-

nity—was determined to have 5% of your designated group and only 2.5%—half—said they were gay or lesbian, then how would the legislation possibly work, in that the employer would be required to have 5% and only 2.5% would be part of the self-determination process of saying, “I am gay or lesbian”?

**Mr Kyle Rae:** I think the example I gave earlier was similar and that is the disabled. In that case, men and women who are disabled do not necessarily have to disclose that they are disabled, but they are part of your workplace. There is an assumption they're in your workplace. I would think it would work in a very similar way. You may believe there's 5% of the population or 10% of the population that is gay and lesbian and that you work towards these goals.

As I said, they're goals, they're targets. You work towards achieving them and as this legislation matures and as workplaces deal with it and as other legislation comes through from the federal and provincial governments which makes it more comfortable for gay men and lesbians to self-disclose, then maybe by the turn of the century we'll have a more accurate and a more—a program that fits the population and the workplace. But you have to allow for that change.

**Mr Sterling:** I guess it's not being fair, in my view, to employers who want to live within the intent of the law and fulfil their obligation in terms of saying, “We will have a proper representation.”

We heard the Canadian Manufacturers' Association say this morning that it would like the opportunity for some kind of mechanism to clarify what in fact it had in its employment force if there was a reason for part of the workforce to say they were or were not part of a designated group. The problem with your suggestion is that, I don't know, when you have sanctions against an employer, you have accountability on the employer but you're not suggesting any way to solve the problem of including your group as a designated group. You're talking about nice, non-enforceable kind of legislation. That's not what this is about.

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**Mr Kyle Rae:** No. I think what it is if you can allow for the latitude of employers and employees to be able to work through this legislation, and it's not a one-off deal. This will continue to be part of the workplace in Ontario and as it becomes more familiar, more comfortable, as other legislation comes forward, there will become a better fit between the workplace and the knowledge that you have about our role in the workplaces of Ontario.

I think you can allow employers to set goals but, in the case of gays and lesbians, acknowledge that, given the issue of disclosure, you may not reach them, but in the end I think you will. It's a matter of time.

What I'm trying to suggest is give the workplace the

latitude to stretch and finally settle into the issue. As I say, it's going to happen with people who are having to disclose whether or not they're disabled. They will have that same concern.

**Mr Sterling:** I think that was raised by the Canadian Manufacturers' Association in terms of somebody who did not want to consider themselves handicapped, but I think its point was that if the employer made an accommodation in order to utilize that individual or employ that individual, then he would be able to count that in, regardless of the way the person self-determined whether they were handicapped or weren't handicapped.

**Mr Kyle Rae:** I would go back to the statements I made at the beginning, that if you know there are groups in society who are being discriminated against in terms of employment equity, you can't fail to include them or protect them because the mechanisms you're using are numerical. You need to find a way of guaranteeing employment protection and hiring practices and promotion practices and I suggest the government, if it is intent on maintaining a numerical, that it needs to include us then in the preamble saying employers are exhorted to, are compelled to, ensure that the workplace is safe and accessible to gay men and lesbians.

**The Chair:** Thank you, Mr Rae. We'll move on. There are three members who would like to speak, just as a reminder.

**Ms Carter:** So I should be brief. Of course, when the minister gave her presentation to this committee, she did state that two groups which are not included as designated groups had been carefully considered. One was gays and lesbians and the other was francophones. The reasons were pretty much as you have said, that there's little statistical evidence, the numbers, and also there's considerable doubt as to whether most would be willing to declare on the form.

Also, is the problem at the point of hiring? It seems to me that harassment in the workplace is maybe more relevant to the problems that particular group has, and you did mention that is not taken care of, that Tim Murphy's bill did that. The government has said it is very willing to take that route and that in fact Tim Murphy's bill doesn't go far enough. I just put it to you: Is that not a more realistic way of tackling this particular problem?

**Mr Kyle Rae:** The Human Rights Commission—if that subsection 4(2) is changed, that will be of great assistance, but it isn't in terms of hiring. Getting in the door can be a problem for gay men and lesbians. There are job ghettos that gay men and lesbians find themselves in. It's very difficult to get promotion. If you're not married with kids, there's an assumption—and you're not going to become a vice-president of a bank if you don't have the requisite prevailing heterosexual lifestyle. These things are taken into account, unfortunately, and the merit of the individual is not.



**Ms Carter:** Which should be.

**Mr Kyle Rae:** And it should be. I think there is ample evidence. My office gets called often about people who are discriminated against, either in hiring or once they're in a workplace, whether they're gay or lesbian, whether they are HIV positive or have AIDS. The Human Rights Commission is quite effective in dealing with the HIV or having AIDS, but when it comes to gays and lesbians, you're out of luck. We need this legislation to say to employers that you cannot discriminate against gay men and lesbians.

**Mr Winninger:** Have you had any experience with the Freedom of Information and Protection of Privacy Act as it affects requests for employment equity plans or reports?

**Mr Kyle Rae:** In my experience with the city of Toronto the information was gathered by using a number to identify and only I, as the manager, knew who the number referred to. That did not go forward to the city, so the city could not then release for freedom of information purposes. I don't believe that information would have been made available.

**Mr Winninger:** I just wondered what your position might be on bargaining agents having access to work-force data, particularly in regard to the designated group an individual might fall under, given that they have joint responsibility for developing employment equity plans, unionized—

**Mr Kyle Rae:** I wasn't going to get into that, but that was one worry that I have. I have been a member of a union and I've had to bargain with a union on a collective agreement and I'm not sure to what extent the unions should be involved in hiring practices. I'm concerned about that now that I'm at the city of Toronto, and dealing with the social contract has been a learning process in itself trying to deal with significant conflicting interests. But I believe this information should be collected and not be disclosed, except to those who are putting together the numerical information or the profiles and not to bargaining agents. I would not make it available. It is personal information.

**The Chair:** One last question, Ms Akande.

**Ms Akande:** Concerning the unions' involvement in hiring practices or omission from it, as you have recommended, it has particular significance when you're talking about promotion, rather than just access because, of course, the unions are those groups which monitor how seniority is being treated etc. In the event that sexual orientation was a part of this act, as it is not, then how would you expect unions to monitor what was not disclosed about an exceptionality that in fact would not be obvious?

**Mr Kyle Rae:** Again, it falls into the same category as the disabled. If they don't disclose, then the unions would not have that information. One of my major

concerns is how the unions will balance their ancient dependence and focus on seniority and deal with employment equity. I think it's something the union movement and locals—it's a lot of work that I think the locals have to do in educating about this issue. It's going to be a struggle.

**The Chair:** Mr Rae, we ran out of time. Thank you for coming and participating in these hearings.

**Mr Kyle Rae:** It was a pleasure to be here.  
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#### BLACK BUSINESS AND PROFESSIONAL ASSOCIATION

**The Chair:** The next presenter, Black Business and Professional Association, Mr Lecky. Welcome, Mr Lecky. You have half an hour for the presentation. I hope you will leave at least 15 minutes for questions and answers.

**Mr Michael Lecky:** I certainly hope so. Actually, I'm hoping Joyce Burpee will arrive shortly because she's the main one doing the presentation. I don't know if we can switch around the times or if you can put another group first.

**The Chair:** Let me ask to see if the Canadian Bankers Association is here. Any representative from the Canadian Bankers Association? What about National Grocers?

**Interjection:** We're not ready yet.

**Mr Lecky:** If that's the case, I'll try to muddle on.

**The Chair:** Let's hold on one second. The clerk will check to see whether the next delegates are be outside. We'll check; one second.

What about the Race Relations Committee of Kitchener-Waterloo? No. Mr Lecky, unfortunately not, so you will do what you can.

**Mr Lecky:** I'm it; terrific. Okay, I'll try to address the issues as best I can. I know Joyce had some material that she wanted to hand out.

The Black Business and Professional Association has, for many years, been an important part of the debate on employment equity. We support the employment equity legislation but would like to see the regulations strengthened and more of the key points included.

**Mr Callahan:** I think your right hand is here.

**Mr Lecky:** Good. Hi, Joyce. I'll just finish my comments since I've started. I'll give her time to catch her breath.

Employment equity will have a positive ripple effect in the economy, as it makes good economic sense. By strengthening the legislation, the entire community will be strengthened, and in turn business will be strengthened and the Canadian economy will be strengthened.

It costs us, the country, millions, if not billions, of dollars to keep people on welfare. These same people are crying out for jobs and an end to discrimination and,

consequently, an end to the privileges granted to people of a particular race.

In the United States, the employers have come to support affirmative action, believing that it enhances their human resource systems and business practices. Large American firms such as Mobil Oil, the former AT&T, believe that affirmative action delivered real benefits. It facilitated the movement of employees into new and often non-traditional jobs, expanded the pool of available staff and helped to reduce turnover.

Ontario faces the challenges of a global economy, where exports take on an added significance. Ethnic minorities can be an important link in international trade, as we have the expertise here that can advise our large corporations on cultural differences and methods of doing business with various countries. Ethnic minorities also help to foster understanding between countries, which can lead to less conflict and increased trade.

For the past 20 years, members of the BBPA have been acutely aware of the systemic barriers that exist in the workplace. Our members and supporters have complained over the years about the problems they face on a daily basis in the workplace. We have heard of instances where a new white employee is trained by an experienced black employee. The white employee is then given the promotion to which the black employee should have been entitled by virtue of his qualifications and experience. Many of these cases have been referred to the Human Rights Commission. It is clear to us that the time has come for the introduction of employment equity legislation so that the systemic barriers to employment can be removed.

Even though blacks have a long and important history in Canada, we have been largely excluded from the Canadian mainstream. We have been here since 1603, when Samuel de Champlain sailed up the St Lawrence. His interpreter was a black man by the name of Mathieu de Coste.

United Empire Loyalists came to the Maritimes in the years following the Revolutionary War of 1775 to 1783. They included black free people who had fought for the British. They were given land and other grants by the British colonial government. Those are the roots of the long-established black communities in Nova Scotia and New Brunswick. The difference is that blacks got marginal land while whites got bigger and better plots. Many blacks also came to Canada through the Underground Railroad run by white and black abolitionists.

Generally, people are of the belief that blacks in Canada are recent arrivals like myself. This is not true. This belief ignores the early pioneers and focuses only on recent immigrants from the Caribbean and the United States. Black Canadians alive today played pioneering roles in breaking down barriers. We have two people here, Zanana Akande and Alvin Curling. In the late 1950s in southwestern Ontario, blacks held sit-ins at

restaurants and movie theatres which excluded them. Individuals and organizations carried on the same struggle across the country while building strong community structures. Their efforts had far-reaching effects, including pressure on Ottawa to remove discriminatory barriers in immigration policy.

Our struggle continues today in our support of the employment equity legislation. We feel, however, that the black people have to be clearly defined as a target group in the legislation, as blacks have found that they have been lost in the definition of "visible minority" while other ethnic groups have been promoted and allowed access to jobs under the visible minority definition. We have heard of stories of Chinese and Indians and other people of different races being promoted but that blacks have largely been ignored, that in fact unemployment is highest among blacks. Consequently, we would like to see a clear definition of the target groups.

I'll pass this on to my colleague Joyce Burpee.

**Ms Joyce Burpee:** Thank you, Michael. I too am going to start with a little bit of history, out of a couple of reasons. We would like, one, to bring a black perspective to this discussion, we would like to underscore the fact that we support this legislation wholeheartedly and we'd like to offer a few comments that we think might make the legislation stronger and more effective.

Michael touched on some of the work that various members of the black and African Canadian community have done in the realm of employment legislation. I would like to go over that a little bit, because at the very end I heard Michael speak about broadening the definitions and ensuring that the definitions of groups are such that they include quite clearly a definition of "black." That is because we've had the sense that even though there's been a long history of work and some of the pioneers and leaders in our community are still around, the stories are well known and they're very well documented and some of you know them well.

Bromley Armstrong and Donald Moore and several people of that sort were the people who brought in fair employment legislation and fair housing legislation. They went out and they did what were called tests in that they sent out people in pairs, sent out a black person and a white person, matched in every qualification except race, and found invariably that employers and potential landlords discriminated. That's not new. The fact is, however—this was in the 1940s and the 1950s when the signs that were around the place were "No Jews and Dogs Allowed." The people who have benefited from the human rights legislation that has since been developed are not black, because in the mid-1980s and up to last year we became aware again that anti-black racism still is very much rampant.

We have, as a community, advocated for equity, advocated for legislation, made delegations to this



administration and, to our personal knowledge, to all the administrations that have existed over the past 20 years, and we're really gratified to see that this thing has finally come to the table and we thank those responsible very much for that.

The first thing, then, that we'd like to recommend, of course, is that the legislation be passed and be passed swiftly so that the schedule that it's now on, to be passed this fall into third reading—we would like very much to see that happen.

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We believe, however, that a great deal of the strength of the legislation has been put into the regulations. We, along with other people that we know have appeared before you, would support removing some of those sections from the regulations and putting them into the body of the statute itself. There is no particular trick around that. It's because we fought so long and so hard that we know that not necessarily everybody supports us in this. This is the third administration that we've been to, and this is the first time that this legislation is on board. So we know that there's not necessarily as much support as we would like. We know that it's easy to change when whims and fancies change, and we recognize also that to change a regulation takes a stroke of a bureaucratic pen, whereas to change legislation you have to go back to the public. So we would like the body of the strength of the legislation to be in the legislation itself, probably because it's harder to change; not that it won't ever change, but that at least they'll have to consult with us and the rest of the public to do so.

I come to the recommendation that Michael spoke of right at the end of his deliberation, and that has to do with the definition of the subgroups. We would like to see legislation that works in such a way that people defined as black or people who call themselves black can see themselves clearly identified and addressed within this legislation. So we would like to see the definition in the legislation as well. Again, there are enough people around who can help with the definition if there is a problem around that.

Our second recommendation had to do with taking various components of employment equity out of the regulations; that is, all of the issues around definition of designated groups. We moved to specifically the definition around the subgroups within visible minorities as a third recommendation, but the data collection criteria, the employment systems review, how goals are set, the reporting mechanisms and the employment equity plan itself we would like to see in the body of the statute.

While we're arguing for the strongest possible legislation, we understand that the people who work day to day together in a company are the people who are in the best position to determine what their priorities are

and should be. So we would support a notion that the employer, the union, the employee representatives and the designated group members, who together comprise a company, set their own goals. However, along with that, we would like to see a strong Employment Equity Commission that has powers to monitor and that has powers to monitor by doing spot checks.

In that, I do not believe that, sitting outside of a company, I am qualified to tell a company how to run its business. At the same time, if they're going to show good faith, they have to be willing to submit those reports to somebody and have somebody look at them in order to verify what they're doing. Again, it goes back to our history. At this point, we're not necessarily that trusting. If someone says they're going to do something, we'd like to be able to prove that they are doing it.

So the next recommendations are in relation to the strength and power of the commission: that the commission be empowered, through the legislation itself again, to conduct proactive monitoring of companies, that the employers be required to prepare the plans annually and submit them to the commission routinely and that there be some short-term goals. I think within both the legislation and the regulations, somewhere up to a period of nine years there's a potential for nothing really happening. We would like to see that gap closed a little bit so that short-term goals be set as well as long-term goals, so that a company might, say within five or even a longer period, have some overall objectives to serve. We'd also like to see within one year and within two years, so that if there are any shifts and changes those can be accommodated.

We would like to see a strong commission, but we'd also like to see a commission that is adequately resourced. This work is not going to get done by simply saying it's going to get done. I think we need specialists, and however they are put, whether they're put as a part of an existing body or they're put as a new body, it is not going to make a difference in how much is spent on this. So if you need someone who can consult with business, who can work with business to develop their plans and to increase the profile of different groups within their workforce, that person is not a human rights investigator, that person is not a person who goes by individual case work to find out if an individual has discriminated against another individual; that person is a person who will understand how to develop a business plan, who will understand how to implement and monitor change and how to introduce change within a large or small organization and to help the company manage that.

The commission will also need, I think, to speak of employment equity and not speak of goals and timetables. We're not speaking of the same issue. I think it's clear, in order that any company set goals and time-

tables, it needs to have correct, accurate and usable data and that doesn't exist now. For the longest time, various groups, community organizations, equity-seeking groups have been asking the federal government to have a simple question on race on the census. They've done a whole number of things.

Right now the employment equity data that has to do with visible minorities comes from a composite of religion, ethnicity, place of birth and a whole number of things, and together the people at Statistics Canada extrapolate that into race. It would have been quite easy for someone to simply ask, "What is your race?" but somehow that is not considered to be a proper thing to do. In any event, we would like to see the commission advocate on behalf of this issue with the federal government and with other data users so that the kind of data that employers are going to use to compare their workforce against can be as accurate as possible.

There are a lot of other functions that were mentioned in the regulations and that we agree with. The ones that we've highlighted here are the ones that we think are not quite as adequately dealt with as we'd like to see.

The last recommendation has to do with something I alluded to before, and that is the ability of the commission to do spot checks. Again, it needs staff to be able to do that, it needs resources and it needs expertise to be able to do that, but what we're looking for is something that, without a complaint being lodged, the commission can on its own decide to audit a company or a bunch of companies.

In conclusion, I would like to draw attention to one particular point. In a sense, I think we—the public sector and the broader public sector and the people who have a greater relationship to our tax dollars than others—we hold them to a higher order. In the last few years we've been hearing of nothing but downsizing and cutbacks among various companies and of course the public sector as well. What has been happening is that the gains or the small gains that have been made in relation to employment equity over the past few years have been eroded through those cutbacks. We would like to see a situation where some action is taken to protect those gains, so we would like to see within the public and broader public sector some consideration so that the game is not always uphill.

Within the discussion of employment equity, within the federal government, there are federal government exclusion orders and set-asides. I don't see very many of those things mentioned in our potential legislation, but I would like to see that considered as well. Even though it's not a recommendation, I would like to see it considered.

Thank you for this opportunity, and we're available for questions.

1450

**Mrs Witmer:** Thank you very much for an excellent presentation. You've made some excellent recommendations here. I'd just like you to expand on your very last statement concerning the set-aside for designated groups. What are you proposing here?

**Ms Burpee:** When I worked for the federal government, it had a set of whatever, things they called exclusion orders, which meant that it could, for whatever reason it determined, step aside from the Public Service Act and recruit and hire people. I'm saying I'd like that considered because in a situation where we have seen, from our membership within the BBPA, that the cutbacks are disproportionately affecting black people, and I would imagine other designated groups who were probably recently hired, that some consideration be made, if after some analysis is done they see that they are in fact disproportionately affected, that another consideration be made to set aside positions so that they can maintain the same balance.

**Mrs Witmer:** That's true. I had taken a look at the statistics for the disabled and I know the same thing has happened to the gains they've made. They've certainly lost those gains within the public service.

You talk here about the collection of the data, and I think you've made an excellent suggestion here, that certainly there needs to be some work done to ensure that appropriate data is available to the employers.

If you had one request of the government, what would you ask it to do as far as this legislation is concerned? Is there one area you are most concerned about that is not being appropriately addressed in order to ensure there is fairness and equity in the hiring process and promotion? It's difficult; we have only three minutes and there's so much I'd like to ask you.

**Mr Lecky:** I think there are probably two areas. One is strengthening the legislation, taking it out of the regulations so that we can enshrine it so that successive governments can't come along and just change it at a whim. Secondly, I think goals and timetables are critical. We want to see some action sooner than later.

**Mr Fletcher:** I thank you for your presentation. I'm just wondering about the Employment Equity Commission and its powers and what it uses. The opposition has been saying there is no need for a commission because the Ontario Human Rights Commission can handle all of the complaints. Do you subscribe to that?

**Ms Burpee:** No. Quite simply, no. The Human Rights Commission has been in existence since 1962 and started on a severe backlog maybe five or six years or so ago. The backlog I think is due to lack of funding. Quite clearly, the Human Rights Commission is a very good body, a very good, solid body of people. If we now decide to saddle it with another set of issues, I think that would simply deny employment equity.

**Ms Akande:** Given the great deal of attention to



employment equity legislation in terms of the designated groups gaining access to the workplace, do you feel that the legislation adequately addresses the area of promotion or safeguards or makes it more possible or more safe for designated groups to move up once they're in the workplace?

*Interjection.*

**Ms Akande:** Even taking into consideration your situation.

**Ms Burpee:** Given that somewhere in this brief we spoke about our cynicism and lack of faith in things that exist, for instance, the seniority clause, if promotion is dependent to a great extent on seniority, no, I don't think it's well addressed.

I think the legislation is probably not what all of us have ever wanted in a legislation, but I think it's a good start and I think some of it is left to employer will. If this legislation were passed, I believe we'd be better off. I think we'd be better off in terms of access at the first level, that is entry, recruitment, access in promotions, but I don't think it's as good as it could be and I don't know that it could ever be as good as that. I'm not sure how to answer that, Zanana.

**Ms Akande:** Okay. My concern, if I may just get—

**The Chair:** Mr Curling.

**Ms Akande:** One statement, Mr Chair—

**Mr Curling:** It's my turn.

**Ms Akande:** My concern is that many of the members of the designated groups may in fact gain access and remain at the bottom of the list, in the same positions in which they entered, so this legislation should perhaps do more to make promotion more possible. Having said that—

**Ms Burpee:** Are you referring to a specific section?

**Ms Akande:** No. I'm talking about distribution.

**Ms Burpee:** That is the status quo, that whatever level the position is—sometimes they are quite high, technical-level positions that in recruitment you could find only a certain group of people who had those qualifications—but regardless of how high that is, and I mean some of the engineering positions, they have remained at those positions. That is the status quo. I believe that the legislation will affect that positively but I don't think it's as positive as it could be. I think it could be a lot better.

**The Chair:** Mr Curling.

**Ms Akande:** More frequent—

**The Chair:** Ms Akande, sorry. Mr Curling.

**Mr Curling:** Having reached there, I want to thank you two for an excellent presentation. I see in my job as a legislator people who have struggled and brought things to this point, that many of the advocacy groups that have come before us somehow feel tired. "I'm tired and I want it over with quickly." My job is to say to

you, and as you have emphasized, that the legislation is vague, it's weak and the bureaucrats try to catch up with making the regulations a little more defined, and you ask, rightly so, that this regulation that seemed to put a little more definition to the legislation, the failed legislation, to make it look a little bit better. You rightly identify that it could be subject to change by the whim and fancy of others who come in.

I don't want you to be tired. I want to continue to say that this employment equity legislation is going to be one of the strongest regardless of who brings it in and to advocate for that kind of strength that we want in it.

Would you say then that having taken the step of the regulation, most of what is in the regulation should be defined in the legislation? I'd just say one quick thing. The problem we have here is, if you take it to court the judges will rule on the legislation, not on the regulation. Do you want to comment on that?

**Ms Burpee:** I think we've commented on that. We would like to see from someone, as you know, who has implemented employment programs over the years—the fundamental components of employment are as listed: data collection, employment systems review and so on and so on. Those things we would like to see in the legislation itself, in this body of the statute, not in the regulations, so that those things would be protected.

We are looking for a strong legislation, but I think, Alvin, in all fairness, many of us are planning to come back at this many years from now until it does get to be perfect. I think this is a good start and we are gratified. If Michael hasn't offered the services of the BBPA to do continuing work on this, we certainly are prepared.

**Mr Curling:** I could have visited that again, but I won't. The other question I have for you—

**The Chair:** One last one.

**Mr Curling:** It is the last, not really the last one, the last one here.

You spoke about the gains that you have lost in the process, and the government has contributed to some of that lost progress. The fact that the Police Association of Ontario today is complaining that it has cutbacks and that the gains it made in employment equity today will be lost. Are you concerned about—and I think you addressed that a bit—those lost gains? Because having struggled and having come this far, somehow this legislation which is before us will appease them. In the meantime, having to go back to find out what you ask of the public sector, I hope you make sure that the public sector funding will not make any regressive move towards employment equity, what you're asking of the private sector, like the Police Association of Ontario.

1500

**Ms Burpee:** I don't think this is appeasement legislation, Alvin; I think this is ground-breaking

legislation. No one in the country has done it quite like this, in the first place. But yes, we would like very much to see whatever gains that have been had so far protected. That is what we're about in this. We know of very many people who are very vulnerable at this time, not only in the public sector, but also in the private sector. But I mention the public sector because we have more give, we have more influence—"we" meaning you as the government—to talk to them about what they're doing and to talk to them about including employment equity as they consider cutting back and downsizing.

**The Chair:** Ms Burpee and Mr Lecky, thank you very much for coming and taking part in these hearings.

#### CANADIAN BANKERS ASSOCIATION

**The Chair:** The Canadian Bankers Association. Welcome, Ms De Laurentiis and Ms Pérez. You have half an hour. Please leave plenty of time for questions and answers at the end, if you can. Please begin.

**Ms Joanne De Laurentiis:** We will. Thank you very much. The Canadian Bankers Association is very pleased to have the opportunity to appear before your committee as you review Bill 79. My name is Joanne De Laurentiis and I am vice-president, domestic banking and public affairs, with the Canadian Bankers Association. With me is Fresia Pérez, who is senior manager for workforce diversity and employment at the Bank of Nova Scotia. Ms Pérez is also vice-chair of CBA's employment equity standing committee.

As you know, CBA represents the banking industry, which falls under the jurisdiction of the federal government in labour matters. The banks have been complying with Canada's Employment Equity Act since it came into effect in 1986. The six major banks are strongly committed to employment equity and have made their commitment known both internally, to their employees, and externally, to their shareholders, customers and the public at large, through their annual reports, speeches and statements to the media.

Regarding Bill 79, we are not clear regarding the federal employers' status under section 49, the contract compliance provision of the bill, and so our first and most important reason for appearing before you today is to request clarification of our status. We have discussed this with government officials and they have indicated to us that because federally regulated industries are covered under the federal employment equity law, they are not to be captured by section 49. We strongly support this approach and we're here to urge the committee to add clarity to the legislation by amending the section to that effect.

We have two other concerns arising out of the legislation that we'd like to table with you. These arise on the basis of the banks' experience working under the federal act, and we present them to you with a view to making your legislation more effective and workable.

The first issue is one of harmonization of federal and provincial requirements. The banks and other federally regulated employers do business in all provinces and territories of Canada, and it's of great concern to us that regulatory requirements, especially in matters where the objectives are the same, should be harmonized. Different employment equity laws can capture employers across multiple jurisdictions because of the way contract compliance provisions can be applied, and the banks contract their financial services to most governments.

We have been encouraged by very clear indications of achieving a harmonized approach. We know for example that the federal government has seconded an individual to Ontario to work on the issue. There are some specific changes that have been made to regulations which speak to harmonization. But there are a couple that remain unaddressed and we would like to mention them to you.

The first is that the employment equity plans, as envisaged under the bill, must include the analysis of availability data, the setting of numerical targets and reporting for each geographical area within the province in which the business operates. Businesses that have multi-locations, such as the banks where the branches are located throughout the province, will find this a problem because they are at the moment reporting on the census metropolitan area of Toronto and the rest of the province as one entity for the federal government.

The other area where there is disharmony between the federal and provincial law is the requirement to make information available to employees throughout consultation or posting. The provisions in your act go far beyond the requirements for consultation in the federal act and would cause difficulty for our industry.

This then leads to the second major issue which we'd like to table before you, and that is the issue of confidentiality of business information. The nature and the amount of information that is made available to employees for both consultation and posting purposes—these are set out in sections 15 and 16 of the act—are excessive, we believe. We certainly agree that consultation with employees and the provision of information is important in the employment equity process, and under the federal law each bank has developed its own method of achieving that process.

Sections 15 and 16 in your legislation, however, leave a great deal of discretion to regulation. The sections of the draft regulation which give effect to sections 15 and 16 require employers to make available information which is critical to business strategies and business competitiveness and which should—in fact, we believe must—remain confidential with the management of the company.

Our chief concern is in the regulations, and these are specifically sections 21, 41 and 46. The effect of these would be to make available to all employees the em-



ployer's plans for a three-year period for job openings at all levels of the organization and in all regions, with precise indications of positions targeted for designated group individuals. Such human resource planning is a fundamental part of an organization's business strategy. To make it available we believe has some fairly serious negative implications for competitiveness and for human resource management for both large and small business. We believe that enough information can be provided to employees without going to the extent of compromising confidential business strategies. We urge you to ensure that more reasonable limits are placed on the information requirements of the act and certainly that confidentiality provisions are introduced.

There is also section 22 of the act, which deals with access to plans by the Employment Equity Commission, the audit function and so on. We would recommend that you look at a confidentiality provision in that section as well, because there is no mention of that.

That concludes our comments. Ms Pérez and I would be delighted to answer your questions.

**Mr Fletcher:** Thank you for your presentation. Really what I'd like to do is ask if we could have the ministry staff clarify where the banks are as far as the federal versus the provincial jurisdiction and employment equity are concerned. If we could just get a clarification on that, that would be nice.

1510

**Mr Bromm:** In section 49 of the act, which is the contract compliance section, the intention is to exclude federally regulated employers. They're excluded by the last statement in section 49, which says that the contract compliance provision only applies to the extent that the party has obligations under part III of the act. As federally regulated employers, banks are excluded from the act and so you wouldn't have contract compliance provisions either.

**Mr Fletcher:** Does that make it clear for you?

**Ms De Laurentiis:** That makes it very easy, if that's the case. The legislation doesn't appear to read that way, but if that's the intent, then we're delighted.

**Mr Sterling:** What would clarify it for you?

**The Chair:** We're getting around to you. Mr Fletcher, that's it?

**Mr Fletcher:** That's it.

**Mr Gordon Mills (Durham East):** Thank you very much for your presentation here this afternoon. I know from the papers I've read that you've had lots of experience in employment equity practices, so that leads me to ask you, based on that experience, what could you recommend for this committee to be a must or a key issue in this legislation? How do you see that?

**Ms De Laurentiis:** As a very general comment, as we review the legislation, the one thing that strikes us is that your legislation tries to codify every practice.

Our experience with employment equity is that it is very much an evolutionary experience, as it were. There's a lot of learning that goes on, both on the part of the employer and on the part of the employee population. There is a certain amount of flexibility that is needed in order to allow that evolution to happen in a productive way. As a general comment, we would have to say that you've tried to codify too many things and it's going to lead to some problems of implementation and certainly may aggravate the relationship between employer and employee, rather than smooth it out.

**Mr Callahan:** There was a letter that accompanied our handout. It's a letter dated January 27, addressed to the deputy minister. Do you have a copy of that?

**Ms De Laurentiis:** Yes.

**Mr Callahan:** On page 3, the final paragraph says: "We believe employment equity laws should be positive and encouraging, providing firm direction for addressing economic and social policy objectives. The thrust should not be to create a second-generation human right, as Ontario's new legislation appears to do." What do you mean by that?

**Ms De Laurentiis:** If you go to the preamble of the legislation, it appears to assume that discrimination exists and that there is a certain right—I'll look for the exact words here, but it really refers to the preamble. It's unusual to have a preamble like this in pieces of legislation.

**Mr Callahan:** An indictment.

**Ms De Laurentiis:** That's right. It presumes guilt and it presumes—

**Mr Callahan:** It immediately sets off an adversarial approach rather than an approach of trying to work together. Would that be a fair—

**Ms De Laurentiis:** It's a very negative message.

**Mr Callahan:** The second thing I'd like to get, if I could, is from staff. Sorry to keep bringing you back and forth. Since you now find that you're not governed by this, I can use my time to get a little information from this gentleman, and maybe it will help you and others. Under section 34(1) and (2), where the tribunal is given "exclusive jurisdiction to hear and determine any proceedings before it and to determine all questions of law or fact that arise in a proceeding," is that constitutional or is that a section 94 judge? And how does the province appoint section 94 judges?

**Mr Bromm:** No, it doesn't try to create the court as a section 94 court. It just grants the tribunal the jurisdiction to answer any matters that are brought before it under the legislation. It's a common section; it occurs in many pieces of legislation. It is constitutional. It doesn't attempt to oust the jurisdiction of any other court; it simply creates jurisdiction for the tribunal.

**Mr Callahan:** I appreciate that, but you've got laypeople—I assume they're going to be laypeople, not

judges—who are determining questions of law and fact and there is a whole line of assessment cases that I recall where it was felt that Ontario could not do that. They have the power to appoint provincial court judges but not people who can make decisions of law and fact.

**Mr Bromm:** I think really we're getting out of a territory that I have any authority to comment on, but if you would like a legal opinion on this type of section, then I can certainly get you one.

**Mr Callahan:** I would like you to look at that, because that's the guts of this whole thing. If it turns out that it doesn't have any meaning, then the whole act is—section 34(1) and (2).

**The Chair:** We'll get additional information on that.

**Interjection:** Section 34(1) and (2)?

**Mr Callahan:** Yes, law and fact.

**Mr Winner:** We'll look at that.

**Mr Callahan:** Let's get an answer anyway.

You've now been told that this legislation does not affect you as banks because they're federal jurisdiction. You commented on the question of being required to make this information available in such a way that it might affect confidentiality and your whole business operation. Is that required by the federal act?

**Ms De Laurentiis:** The federal act addresses the confidentiality issue, yes.

**Mr Callahan:** I can understand the importance of that if you have to make it known to the bargaining agent. I get the feeling the reason people are objecting to that—not people who are looking for these rights, but people who are coming here from business—is that they don't want to give the bargaining units any more information to use in negotiating collective agreements or even, for that matter, getting into the operation as a union. I may be mistaken, but I don't think banks are yet unionized, are they? To a large extent, the employees of banks are women. Would that be right?

**Ms De Laurentiis:** Seventy-three per cent.

**Mr Callahan:** Is there anything to this as that being part of the reason that you wouldn't want this information to get to the bargaining agents would be to avoid perhaps giving them a leg up in the next collective agreement or allowing them to unionize if you're not yet unionized?

**Ms De Laurentiis:** No, it's exclusively to do with giving notice on strategic plans that would go beyond the company—that information would go to competitors. The regulations require that an employment equity plan be for a three-year term. I'll give you an example.

If you are in the process—let's take a bank—of expanding in a particular business area or adding to it—as a result of Bank Act changes just in the last little while, banks are now able to buy trust companies and so on, so they are making plans over the next three

years about what business elements to add or to delete, and it's that kind of information that there is concern about sharing in a public way. The way the provisions are written, in essence, the information is very public. Anyone could know it is intended to add  $x$  employees for  $x$  purposes. So it's really strictly to do with guarding competitive information. That's what it's all about.

**Mrs Witmer:** Since you have had some experience with this type of legislation, I want to focus on the definitions and the self-identification. There have been some concerns raised about the fact that there will be some difficulties involved in self-identification, and I just wonder if you have any comments to make and any suggestions that could be helpful to the government.

**Ms De Laurentiis:** We're very supportive of the self-identification process and we certainly had—this is referring back to Mr Mills's question that we evolved our position, as it were, as we experienced reality. Self-identification is really the only rational way to go. If you try to do it any other way, it's quite difficult.

It isn't without its problems, because we have experienced underidentification—individuals who have been accommodated, for example. The question is, do you feel disadvantaged, and if you've been accommodated, you may not feel disadvantaged. So there is a problem with the data quality, no question. But self-identification is still the best way to go, and as Fresia has more hands-on experience than I do, she can elaborate on that, but I'm sure she agrees with the point.

1520

**Ms Fresia Pérez:** I support that, yes, completely. I don't know if you have any other specific questions.

**Mrs Witmer:** No, there's just been the indication that sometimes there is underidentification, and I think you've indicated that to be true and you've raised the same types of concerns that some of the other individuals have as well. There's been a suggestion that perhaps there needs to be another mechanism available if people don't self-identify. I don't think anybody specifically told us how that could be achieved, but that the employer have recourse to some further action in order that the survey would accurately—you know.

**Ms Pérez:** In my experience in my years in employment equity, I have not come across any mechanism other than forcing people to identify, which is something that we would certainly not support. We do believe, as Joanne said, that there are challenges with it. However, we've been very successful, perhaps not the first time but the second time, and the lessons are that self-identification is the only way and that it helps us just to understand even the climate and employees' understanding of employment equity when we have better participation rates.

**Mrs Witmer:** So the challenges are not insurmountable; they can be dealt with. What about the definition?



We've had, particularly the two groups, the visible minorities and the disabled, indicate they'd like to see some subgroupings within the definitions. Do you see that as something that would be beneficial? In fact, we had the Black Business and Professional Association here who indicated they would like to see that happen, just a few minutes before you appeared.

**Ms Pérez:** I guess my comment there would be that it all depends perhaps on what one is trying to do with employment equity. We certainly believe that we want to create and establish a diverse workforce when we don't have it, and I would certainly include any group and certainly subgroups. We are mindful of the fact that the representation in our areas is better or worse depending on some of the groups, but our plans certainly allow for that at the moment, so where we see that there's an absence of a specific subgroup, if you want, this is where we focus our efforts at the moment without necessarily a requirement to count how many people we have in those subcategories.

**Mrs Witmer:** So that's something you're doing at the present time.

**Ms De Laurentiis:** If I may add, the one problem with segmenting the data too much is that you really then lose control; the numbers can become meaningless. Going back to your question of self-identification, is there another way, the related issue there is the availability of the census data that one uses to measure the workforce against. If you're reasonably confident that you've got good data there and you deal with that and make sure you are comparing apples and oranges, the broad categories work. When you start segmenting, you get into a real data quality problem.

**Mrs Witmer:** Thank you very much for your presentation.

**The Chair:** Thank you both for the presentation you made and for coming here today.

**Mrs Witmer:** I wonder if our legislative research people could take a look at the survey that was done for the Employment Equity Commission, in order that we could see the breakdown and I wonder if that information could be made available for us, and also done for the Human Rights Commission, so that we can see the composition of the workforce within those two.

**Mr Curling:** Could I make a quick suggestion in the meantime too, that the 25% of those businesses that are exempted, under 50, if we have any statistics to show how many of those designated groups are within that 50 and under. Do we have any statistics on that? If you have it, fine; if you don't—

**Mrs Witmer:** I'd also like to receive at the same time the data for the census metropolitan area of Toronto so that we can take a look at the relationship there.

**The Chair:** I think we can get that as well.

#### NATIONAL GROCERS CO LTD

**The Chair:** Welcome, Mr Williams and M. Rochon. You have half an hour for your presentation. We have, from time to time, spent a great deal of time on the presentation and left very little for questions and answers, so please try to do that in your presentation.

**Mr David Williams:** I'll try to do that for you. I appreciate the opportunity of being here and to represent our company's view on what we consider to be one of the most important issues that both society and the business community, as I can speak for, are going to face in the 1990s.

For us employment equity has been a large part of our ongoing business and strategic planning. It's very obvious to us that for anybody, particularly those in the retail business sector but for all businesses, things have changed. They are changing more rapidly than anyone can expect, and the demographic profile of this province has changed to the point that if you want to be successful in the 1990s, you must change with it.

That says that you want an organization that reflects the community in which you serve, particularly as retailers, and that you want to draw from the largest talent pool that could help you reflect the community that you market to, and that your organization should reflect that so that we should not have to go outside of our business to find out the concerns and interests of the exact community we're trying to serve.

Our interest in being here today is hopefully to give a balanced, responsible approach into how to deal with the question of elimination of discrimination in whatever form it takes in the workplace and, hopefully, through that experience, in society in general.

I'm sure you're going to hear from many people in the business community about how we should all be left alone to our own devices and the law of supply and demand will take care of itself and this problem will go away. That is not a responsible approach and that is not one that we support. We do believe that the issue of employment equity can only be addressed, and addressed in the time frame that hopefully the Canadian society will accept, by a kickstart, and I believe this legislation does that.

On the other hand, we believe that you'll get a lot of very responsible individuals from advocacy groups who will suggest that because of the nature of this issue and because of its seriousness, it should be addressed immediately and overnight. I suggest to you that that will also fail for the very same reason: This is an issue of attitude. Discrimination is an attitude and that cannot be legislated.

What must be legislated and what governments have responsibility for is to legislate behaviour that's acceptable or unacceptable. I believe business leaders have the same responsibility for their workplaces.

If we legislate what behaviour is acceptable or not, in time that will change the environment in which people work, and out of that environment will come a more positive attitude change and a more permanent one.

So rather than quota systems that have been tried and failed elsewhere, I'd like to suggest that we have a Canadian solution, and one that's built on understanding, tolerance, sensitivity and ultimately compromise, because both of these extremes will not meet the needs of Ontario workers, particularly in environment. I can say to you that for our workplace, we know that we have to engage our employees in understanding and discussing this issue. It's a sensitive one. It's not easy to talk about, but we must create an environment where people talk about this as easy as they talk about sex and religion. And when they can, and they can talk about the concerns they have—and that's the people in the non-target groups, "What about me?"—and when you can create that kind of environment and get them to embrace the fact that there is a problem, and if you accept the problem you must accept that there are some solutions and have them be part of that solution, you will create an opportunity to be successful in what are very admirable objectives in the bill.

But they are only objectives, and it's in the real workplace that those objectives have to come to life and meaning and take a life in a form of their own.

I suggest to you that the changes we have tried to recommend here are not to try to make it easier on any employer but to try to create an environment where I and my company can engage and embrace our employees in accepting the changes that must take place and having them support them so that we will be successful, not just for a year or a particular goal and timetable, but for life. With that, you have the recommended changes we have suggested and we'd be happy to discuss any of those or any other questions you have.

1530

**Mr Curling:** Maybe I'll just go straight to some of your recommendations here. I think on dot 3 you say, "Amend Bill 79 so that the coordinating committee in multiunion companies can have an equal number of representatives from both the employer and the bargaining agents, thereby making it consistent with the intent of the regulations."

The regulation talks about people in the bargaining unit and the employer, and then it talks about those that are not in the union will just be consulted. What is your feeling about those who are not in the union being a part of that committee you talk about?

**Mr Williams:** Again, I think it has a commitment that, for those employees who are not represented by bargaining units, there must be a committee formed to discuss that. I can tell you that for our organization we have one in place right now. Any organization that tries to implement this program without the involvement and

support of its people will fail. So if it's not in the legislation—I thought it is in the legislation.

**Mr Curling:** It's in the legislation that talks about a regulation. Where it is, I don't recall now.

**Mr Williams:** I get confused between those.

**Mr Curling:** It states only that they will be consulted. I don't know what "consulted" means. I presume you catch them in the washroom and say: "What about what we are doing? Is it okay?" If they say no, you say: "Okay, it's fine. I have consulted."

The other part says you sit at a table and you work out an employment equity plan because you belong to the bargaining unit. You know you are more privileged than those who don't, but it also affects those. Would you like to see that amended to say, even for those who are non-union, that someone be appointed to sit at the table to draft the employment equity plan?

**Mr Robert Rochon:** That's an idea. As an organization we have a very active group that has representatives not only from each of the designated groups but from every operating division of our organization. We meet on a monthly basis and are actively involved in an employment systems review right now, looking at things like job-posting policies and workplace harassment policies. It's working very well for us. If that is a potential recommendation coming out, that it be included as a provision in the regulations, we certainly wouldn't take issue with that.

**Mr Curling:** I think the government is listening now to say, "It worked in your organization, I presume it can work in the others."

The second to last one on that page, you mention about amending Bill 79 and you talk about not proceeding with complaints that are frivolous or vexatious. Who would you suggest is to judge whether a complaint is frivolous or vexatious?

**Mr Williams:** It obviously can't be the employer, so we have to have a third party. I don't mind if it's even the commission itself. All I want to do is have somebody who doesn't say I'm bound to have to take this thing forward and incur lots of legal costs if there is an obvious malicious nature, ie, every person who is let go from an organization sees this as an opportunity to either continue to be employed while the protest—sorry.

**Mr Curling:** While the complaint is under consideration.

**Mr Williams:** —the complaint is being considered or for any other reason that could be malicious in nature. I have no objection if it's the commission, if that's felt to be fair. I don't think it has to be a third-party lawyer or anything like that. I don't want to get into big costs. I want to get through and make sure we don't spend all our time on the wrong issues, that we get to making this thing successful in the workplace but take away any incentive for someone in the workplace



to misuse what it was intended for.

**Mr Curling:** You mentioned the word “cost.” There’s a concern, I presume, that we all have in government, opposition and government itself, that if we’re setting up a bureaucracy it must be effective. Some people mentioned earlier on that maybe Human Rights needs more money to make it effective. I don’t believe in that. Sometimes money makes it worse, as a matter of fact. Do you have any concern at all, as you read this, that the bureaucracy that will be created will be effective? There’s a concern of the person who will be complaining, whether or not the complaint be presented to human rights, or presented to the commission itself. Did you see any confusion of where they would go to have their case addressed?

**Mr Williams:** Again, I’m not an expert and certainly law is not my profession. I would ask that there be consideration to making sure there is an expedient process by which issues that are brought to the commission are dealt with. If that is in a single body or a multiple body—I don’t know enough, to be honest with you, about the Human Rights Commission and its role. I think it may be that the issues we’re dealing with may have to be dealt with in a more expedient manner than has been dealt with in the past. If that’s the case, and a separate body is needed for that, all I would ask is that anything the government does it consider to do in a more efficient and effective manner than in the past.

**Mr Curling:** It does have an impact on your company, you see, that the time it takes to deal with a complaint is lost time and lost money and, as a matter of fact, the confusion and the animosity that develops—

**Mr Williams:** Very much so. What we’re asking for is in support of the legislation—we’re supporting the principles that are involved. It’s automatic that we say, “Please do that in a very efficient, effective manner that allows the legislation to be successful.” You know, again, this is like costing the business. We don’t see employment equity as a cost of business, we see it as an investment. If you have costs, you try to reduce them. If you have investments, you put the right amount of money in based on the return. We see a great return in making sure our company reflects the diversity of the marketplace that we serve and we want to get the largest talent pool possible. That’s an investment in our people that we’re going to get a return on. I’m not suggesting that’s the way anybody else looks at it, but we don’t see it as costs. We see it as investment and we’re going to put the right level of investment to get the right return.

**Mr Curling:** While we all welcome employment equity legislation, which I do—I don’t really welcome this one as much as I would love to have welcomed it because I find it rather weak in the process. Do you have any problems at all—I don’t know if you had an opportunity to look at the regulation and look at the

legislation and to say to yourself, “I just sort of hope”—because you seem to have no problem with employment equity—to say, “If only this was in the legislation, it would have made things so clear and you can determine the direction the government and all of us in Ontario would like to go.”

**Mr Williams:** Again, I would come back to the issue that our organization believes in the rights of individuals of all of these target groups. If there has been discrimination in the past in our organization or in the workplace in Ontario, we wish to see it eliminated and we wish to see it eliminated in a fairer, more sensitive and caring way than it was put in place. That means no overnight solutions, no reverse discrimination, and that’s why we’re a strong supporter of the merit principle. We believe that in doing that you can gain the support of others, and when we eliminate the discriminatory barriers in posting and training and hiring, I believe we’ll have a workplace—and if there’s to be any discrimination of any kind, then it should be in education and training and development. If there’s an excess put into those areas, I believe I can get people in the non-target groups to support it because that’s addressing the issues that created the situation in the first place.

Do I have issues? I don’t have issues with employment equity. I’m a big supporter of it. It’s hard not to. If you’re asking me if there are things we’d like to see different to make sure it’s a success, through our eyes, the ones we propose are those.

You’re going to hear 7,800 of them, so I’m not professing that we know everything there is. We have had experience with it. We’re getting a very positive response because we’re doing it, I believe, in a proper, appropriate manner and not forcing it down everybody’s throat and saying, “Tomorrow morning your life changes.” But we are getting everyone to believe that life cannot go on in the same manner as it went on in the past if you wish this society to be the kind of society you want to live in and the kind of workplace you’d be proud to work in. Things have to change. We’re only talking about how to make it happen. That’s why I don’t like the two extreme positions of Archie Bunker and Mother Teresa, if you like. I want to come in the middle somewhere.

**Mrs Witmer:** You’ve indicated here that you support the principles of the bill and that they are the ones you have introduced in the employment equity program throughout your business. I wonder if you could just give me some additional information as to what you have done in the form of introducing this program into your workplaces.

1540

**Mr Rochon:** With a workforce of approximately 20,000 employees, you can appreciate the magnitude of the task we have ahead of us. We are about 60% to 70% of the way through a workforce survey, where

we've asked people to self-identify. That was part of an educational seminar we put together that helped to communicate the reasons behind an employment equity plan and communicated it for the right reasons, not that it was going to be reverse discrimination but it was the right thing to do. It really helped to educate our employees. That was the first step.

From there, pretty much on a weekly basis, we've been conducting managing diversity sessions with our employees, particularly with our opinion leaders within the business, to help them get familiar with the issues and how the demographics of the province are going to necessitate change in the way we do business.

We have also, as I mentioned to Mr Curling, been conducting a human resource advisory group, where we have representatives from the various groups. We are conducting a job evaluation review as we speak.

It's an ongoing process in terms of all the regulation requirements. We're really well down that road. We certainly have a long way to go, but we're very proud of the things we've done so far to help achieve the objectives of the employment equity bill.

**Mr Williams:** The only thing I'd add to that is the danger, in that when you say you're doing something, everybody thinks you have the solutions. We don't. When people try to embarrass us by saying, "Tell me how many people you've got who are black in senior management," I say, "More than we had when we started and less than we'll have when we're finished."

Don't try to embarrass people. Don't make people feel individually guilty about this issue. Make it a collective guilt. We all share the blame for the situation we have today. When you get employees to understand, or even managers, senior executives, unions or anybody—nobody went about to do this purposely, but there is a situation. When you ask them if there's discrimination in Canada, Ontario, the food industry and our company, and "Yes, yes, yes, yes," you just get down to the point of saying: "Okay, we now agree we've got a problem. What can we do about it?" Engage people in that. That's where the real success of our program will be, engaging people in accepting it and embracing it.

If you're asking me, will I be able to get all 20,000 people to sign off, no, but we will have such a large percentage, a majority, that the will of the minorities will win out. Those who feel uncomfortable in our organization because of the approach we're taking will leave. Well, good riddance.

**Mrs Witmer:** When did you start your program?

**Mr Williams:** About two and a half years ago we met with the first group, the women's committee, to try to understand their issues. When they brought their issues out, we realized that this was not a women's issue, this was an issue for all employees and it got

formed into a full employment equity initiative on our part.

It is very difficult. In some of the recommendations we're making, please allow us not to have to compete with 42 different jurisdictions and part-time and full-time. What we would like is the opportunity to come back to the commission and say: "May we put this together in a different form?"—not to try to go around the legislation but to make the cost issues that you mentioned, Mr Curling—"Would it be easier if we could separate these into four?" What we'd like the act to say is, "You have the right to come back to the commission to get that kind of"—and then let the commission decide if we're trying to divert the intent of the law or just to make it more practical and implementable, because we're going to have a nightmare administratively if we have to do 32 of these with 92 unions and part-time/full-time. We won't get on the real issue, which is making change in the workplace happen and getting our employees to see the necessity for embracing what is a moral, ethical and business issue.

**Mrs Witmer:** I guess we're hearing that quite often from the employer community, the need for flexibility.

**Mr Rochon:** Definitely.

**Mrs Witmer:** Obviously each workplace is different. We have heard from the municipal sector. They have unique problems and what have you. I hope that is one message the government will take to heart, the need to take that into very, very serious consideration.

I think you've done a very admirable job. It's taken you some time and I think that's a message that needs to go out as well. Unfortunately, it's not going to happen overnight. I guess if you work cooperatively and everybody does, you need to encourage people to buy into the process.

**Mr Williams:** I think your point on the timing is why we would ask that goals and timetables be allowed to be set by the employer, because Algoma Steel is going to have a lot tougher issue than I'm going to have, and someone else who's growing at 200% a year has a lot better opportunity than me. If you allow the employer to set those goals—however, at the same time I accept that you can't allow everybody to say, "Do your own thing" but use the stick when you have to. If the employers submit their goals and timetables and the commission feels that that's not appropriate, then use the big stick, but only on the 10% or 20% who are trying to not follow the objectives and the commitments made in the act. But don't bring in rules to control the 10% that make for my inability and our company's inability to make it successful in the other 90%.

I just don't think any government or any bureaucrat or anybody can play God in the workplaces of every single facility in Ontario and know what's best in that



business. But they do have the right to challenge—if I say I can move this much in this period of time, I think it's quite appropriate for the government to say, "We'd like to sit down and challenge you on that," and if we can't come to a compromise, somebody has to have the ultimate authority. I accept that.

**Mr Fletcher:** I think you hit a good point when you said that first you have to realize that there's a situation that needs correcting, and once you hit that realization, it's, "Okay, how do we do it?" and then it's the solution part. I agree with you wholeheartedly on that.

I know your organization has considerable experience in employment equity, and I'd like to make sure that everyone knows that. I'm just wondering, during the setup phase of your employment equity plans or programs, can you enlighten us a little bit on some of the problem areas or some of the bumps and roadblocks that got in the way?

**Mr Williams:** Is this True Confessions?

There's no question that when you first hit this issue, I think it's just the sensitivity and nature of the issue. If you're not in the target groups, it says, "Boy, my life is going to change; I have no future," and if you're in the target groups, it says, "Wow, I'm going to get promoted tomorrow."

What you're trying to do is engage people. The toughest thing we had was engaging people to understand. We really actually went through the process of, "Do you believe there's discrimination in Canada?" Everybody says, yes. "What about Ontario? Is it any different?" "No." "Is our industry any different?" And then, "Is our company?" When you've got them back down to saying, "You know what? There is a problem in our company," then it's getting people through the psychological barrier of rather ignoring the issue than facing it. If you think facing an issue is a problem, you try to avoid it.

The things we learned were in how you engage people in a discussion they really don't want to have. The thing is you have to keep going at it. You can't give up because the first time Archie Bunker gets up and says, "Leave me alone; I know what's best." You have to keep saying: "Hold on, now. Think about our future. Think about the kind of demographics. Look at the immigration of the country. Look at the kind of markets we want to succeed. We're successful today, but will we be tomorrow?" As you get people to start to see, you know what? This isn't just a moral, social issue. This is a damned good business issue, because those retailers or those industries that face up to it and change their organization—if my competitors don't, then customers are going to want to shop in my stores and they're going to want to come and work for me. That's a great position to be in. I only hope the others don't come to this forum and are not interested.

**Mr Fletcher:** Something else you hit on was, let's do it overnight. Some groups have appeared before us and they don't trust the business community to be able to handle this, whether that's something that's built up over years or not, and they're saying that this legislation is too weak; it doesn't go far enough. In fact, Mr Curling has also said that this does not go far enough, that it's too weak.

In other words, are we saying—and I hope not, because I think there's a partnership that can be built here with the business community, with community groups, with labour organizations, with employers—to carry a big stick and to force the business community to do it overnight? It hurts me that Mr Curling would suggest that you should be forced overnight to change your practices that have gone on for years.

Isn't it the wrong approach as far as trying to do too much too soon, too fast, that we could put in jeopardy the whole process of employment equity if we don't do it on a more equitable, more cooperative basis?

1550

**Mr Williams:** I would use the words "tolerant," "sensitive" and "understanding." Understand the community; understand the economics of what's going on. But at the same time, how can I win over the advocacy groups if they don't—do they have reason not to trust us? I'm sure they do.

The question is, if we're going to do the Canadian solution to this, it's a compromise. We're going to have to be given the trust, because unless we create the right environment, with all the will in the world you can tell me to make 28 changes in my organization, but if you've got 19,800 other people who are now against this, those 28 people are not going to feel very good in their new positions.

We want to create an environment where people move up. Why? Because of their talents that haven't been seen fully in the past. So it takes time to establish that, and the education process is what has to come in.

Too bad we hadn't this three years ago. We'd be having a different discussion today. But, yes, it needs time, and all I'm saying is that if the advocacy groups or anybody else says, "But we can't give you that much time," then what you have to say is, "Then the stick that the government uses is your time schedule." You've set timetables, I think, whatever it is: a three-year plan. At the end of that time frame, if we haven't done the job, the business community better realize the government is going to do something a lot worse.

So if you want to get behind it, get behind it and make this thing work, because then you won't have Big Brother coming back in, or Big Sister, saying that you've got to make more changes. We have an opportunity to prove that we can manage this, but it has nothing to do with meeting your goals. It has to do with

running my business and treating our employees the way we believe they should be treated. I don't want anyone else to tell us how we should treat our employees. We damn well know and we've got a good reputation with our employees. I don't want someone mucking that up.

**Ms Akande:** Recognizing your position on the need for flexibility and good intent, the importance of good intent in this, and recognizing too, as I know you do, that not all employers are as forward-thinking or as accepting—

**Mr Williams:** We're not all created equal.

**Ms Akande:** —do you see a need for, in the reporting process, some process or some method of employee tracking?

**Mr Williams:** How do you define employee tracking?

**Ms Akande:** Employee tracking, whereby an employer would be asked to provide information to demonstrate or to show that employees who were hired at level *x* had moved, or that some had moved, to levels beyond that.

**Mr Rochon:** Is that not a requirement of the regulations, though, that we will have to be able to do that?

**Ms Akande:** But what I'm asking, since this is around the legislation, is whether you think it would be much more binding or necessary or effective to have it in the legislation rather than in the regulations.

**Mr Rochon:** I don't personally see it as a necessity. I had a meeting with our systems representative this morning and he wished that that provision itself would go away because it's going to be a nightmare for him to do the programming required to do that.

**Mr Williams:** That's for a large organization. Small businesses will have a bigger issue with that.

**Mr Rochon:** It's something that we will obviously want to demonstrate based on the commission's audit powers that might come into force.

**The Chair:** Mr Williams, M. Rochon, thanks for the contribution you've made to us today in these hearings.

#### RACE RELATIONS COMMITTEE OF KITCHENER-WATERLOO

**The Chair:** The next group is the Race Relations Committee of Kitchener-Waterloo.

**Mr Philip J. Fernandez:** Chair and members of the standing committee on administration of justice, my name is Philip J. Fernandez. On behalf of the Race Relations Committee of Kitchener-Waterloo, I'm here to present our vision of inclusion as it relates to Bill 79, An Act to provide for Employment Equity.

The Race Relations Committee of Kitchener-Waterloo is a group of concerned volunteers who work together to encourage good race relations in our community. In our view, "good race relations" means that all members

of our community, no matter what their racial, cultural or religious background, are treated equally and with dignity and respect.

Our vision of inclusion based on the equal treatment of each community member means that with regard to employment, each individual is entitled to be evaluated on criteria that bear a demonstrable relationship to successful performance of the jobs for which they were used.

Our vision of inclusion is based upon a belief that each employer considers the following to be a privilege and an obligation: to be able to recruit and promote from an inclusive pool of human talent, a talent that is based upon criteria—and I repeat—that bear a demonstrable relationship to successful performance of the jobs for which they are used.

In the region of Waterloo, there is an annual recognition of the many businesses that have been innovative leaders, adopting employment equity into their business practice. In the opinion of our committee, these employers provide the region of Waterloo the quality of life that people tend to associate with our part of the Canadian technology triangle. Without the leadership of these visionary businesses, the burden imposed upon the persons in designated groups and on our communities would have been far higher than what it is today.

We welcome the government's initiative with Bill 79, the proposed Employment Equity Act, because in our experience there are far too many employers who continue to exclude in their recruitment and promotion policies and practices. We welcome the public consultation process that will provide the people of the province the opportunity to improve and strengthen this government's initiative.

The Race Relations Committee of Kitchener-Waterloo is concerned that the province of Ontario is simply putting up smoke and mirrors by enacting an employment equity law as submitted to this committee. There already exists a federal law. We do not need more of the same. If this bill is to be a sincere effort to alleviate the burden experienced by the designated groups and the community they live in, there must be changes to this bill.

We believe in the protection and maintenance of what we as a community value by enacting laws in a democratic expression of the common good. The entitlement of each individual to have access to the opportunity of demonstrating full potential is one such community value that needs to be protected and maintained by the proposed employment equity law.

The proposed Bill 79 before you needs to be transformed to blend together what is necessary, what is fair, and what is workable. Without transformation, this bill is in danger of fulfilling the predictions of those who echo the fears of quotas, of those who speak the myths



of lower standards and of those who speak the lies of higher employer financial burdens. Our province deserves better.

Sections 19 and 50 of the bill address the powers to set exemptions and to make regulations by orders in council. This will allow the government of the day wide-ranging powers to amend the substance of the Employment Equity Act, with no checks and balances.

Is this bill going to mean real change or more of the same? By "more of the same," I'm referring to the federal bill. This section, for example, will give the government of the day the power to decide that the Employment Equity Act may be adapted—"less stringent" are the exact words used—for an employer it wants to favour.

We strongly endorse the principle that all employers formulate their own employment equity plans and submit them for approval to a monitoring agency prior to plan implementation. Sections 19 and 50 will allow for the government of the day to set up different rules, exemptions included. This is not equal treatment, and we are asking for sections 19 and 50 to be changed. We recommend that sections 19 and 50 must be limited to the maintenance of the Employment Equity Act. Any and all powers to adapt the bill must remain with the Legislature alone.

#### 1600

Section 1, on entitlements, speaks inadequately about individual entitlement. Also, it creates a dangerous notion of a hierarchy to group entitlement in subsections 1(2) and (3).

Equal treatment in employment, according to the Human Rights Code, is not adequate. Part I, and specifically this section of the act, makes up the essence of the legislation. It must be clear and of substance. It must always express the value of seeking fairness for all. It fails to do so. We fear that the absence of a clear statement of these values will work against this government's initiative that was titled in a consultation paper, *Working Towards Equality*.

We believe that today, the notion of a hierarchy amongst the designated groups is divisive and may lead to a competition for group entitlements. We recommend that subsection 1(1) be strengthened to ensure that no individual will be denied employment opportunities or benefits for reasons unrelated to ability. We also recommend that the hierarchy implicit in subsections (2) and (3), where aboriginal is specified separately from other designated groups, be removed.

Section 8, on obligations: This section speaks to the obligations of the employer and uses the words "employment equity" quite extensively. Employers in this province have, time and again, expressed confusion as to what is being asked of them. We are concerned that employers will get on the bandwagon of tokenism

by ignoring the individual and concentrating on race, gender, able body etc.

We recommend that this act include, as an obligation in principle, for every employer to use criteria in recruitment or promotion that are shown to bear a demonstrable relationship to successful performance of the jobs for which they are used.

In our discussions with the community in Kitchener-Waterloo, we have heard on numerous occasions about the barrier imposed by seniority rights. For example, when the two city hospitals streamlined their services, many nurses who transferred from one hospital to the other lost their seniority rights. This is a barrier in employment, unrelated to performance or ability. At the local school board, when there was a need to reduce the supervisory staff, that determination was based on seniority and not ability of the individuals.

We believe that an Employment Systems Review is the place of determination if systemic barriers exist in the workplace. We recommend that the determination of systemic barriers remain the concern of the employment systems review and the exemption stated in subsection 5(2) be removed entirely. This will serve to strengthen the collective bargaining process as expressed in subsection 14(2).

We view the commission, this is the proposed employment equity commission, as having two distinct roles to play, both of which are separate from the role of the proposed tribunal. The first role we see for the commission is as a proactive, strategic player in the province promoting employment equity with a vision of inclusion. The second role is to assist people, and in specific situations be an initiator of employment equity claims. We see the commission as a partner with community on a regional basis.

We recommend for the commission a proactive, strategic role, including the role of auditor; receiving and approving of employer-submitted plans; developing policy and guidelines; recommending regulations for enforcement, education about requirements and the necessary measures to ensure compliance; provider of support to potential claimants; and a partner on a regional basis with the community.

We also recommend that section 24, regarding commission powers to order compliance, under certain circumstances be transferred to the tribunal.

The role of the tribunal: The tribunal powers are vague and confusing. Some claimants may be passed back and forth between the tribunal and the Human Rights Commission. Claims regarding human rights or employment should be centrally screened and the claim channelled to the appropriate body.

We recommend the following for the tribunal: to include the hearing of claims regarding non-approval of a plan by the commission, non-compliance to an

approved employment equity plan; to provide a choice, to the parties to a claim, of mediation or adjudication, as the circumstances warrant (where there is an unsuccessful mediation, the adjudication must proceed right away); to reconsider when appealed by the parties to a claim; to permit a narrow review by courts or the Ombudsman of its decisions.

On behalf of our committee, and at very short notice, I have attempted to convey our very serious concerns regarding Bill 79. We have made specific recommendations and we ask that this standing committee on justice give them every consideration.

As a group advocating for this legislation, we feel very strongly that this bill must not end up being more of the same. It should signify real change, not because it is a popular fad or the giving in to special-interest groups, but it must mean that the province of Ontario values the diversity in human talent it has available and that this talent is entitled to every opportunity or benefit for reasons based on ability.

**Mrs Witmer:** Thank you very much, Philip, for your excellent presentation. You have certainly accurately conveyed the views of many people in the Kitchener-Waterloo community. I know how you have worked so hard on behalf of this committee.

You've suggested some very specific recommendations, which I personally do appreciate, and you certainly supported them by first discussing your concerns.

You indicated here on page 5 that you were concerned there could be some problems with the employment equity plan and you indicate, "We strongly endorse the principle that all employers formulate their own employment equity plan and submit them for approval to a monitoring agency prior to plan implementation." According to what you've indicated, you're really concerned that sections 19 and 50 would allow the government of the day to set up different rules and exemptions.

**Mr Fernandez:** That's right.

**Mrs Witmer:** Okay. I would like to ask the staff, is that indeed what could happen without any changes?

**Mr Bromm:** The sections you're referring to do allow the regulatory authority to exempt certain sectors or apply modified requirements to those sectors. It would have to be done through regulation.

1610

**Mrs Witmer:** That being the case, are there certain sections within the regulations that you would definitely like to see contained within the bill?

**Mr Fernandez:** I think the powers to amend the substance of the bill. I mean, regulations are meant to provide for maintenance, making sure that the law does not lose its significance between legislative sessions. This is the forum in which the public can come and deliberate, not some government commission passing

regulations without having the proper role of providing input and the checks and balances. I can come and talk to my local MPP, discuss the concerns and address the issues that arise from that. Having a commission pass regulations I think is unfair. In fact, it's inviting a lot of employers and any other group to lobby the commission to change regulations willy-nilly, and that's unfair. The focus should be on providing people the opportunity based on ability alone, and that should be the prime focus of the efforts in employment equity.

**Mrs Witmer:** Certainly, I think if we don't make some changes to the bill and include some of the regulations at least, if not all of them, there's going to be a feeling of uncertainty, because at any time the rules of the game could change for employees or employers.

**Mr Fernandez:** I'll just correct you about using the word "game," because for a lot of people it's a bread-and-butter situation, and for them, they've struggled. You've heard people here, and I'm sure you didn't mean it that way, but that's exactly the point we're trying to make, that it's serious enough that people should not have to find today it's one thing and tomorrow it's another.

One of the prime things employers are being asked to do is to make sure that everyone has an equal opportunity, so that word-of-mouth hiring, for example, does not continue to exist. Word-of-mouth hiring provides the opportunity to one person and not to the other. This works to the detriment of everyone, to employers and to potential employees. Draft regulations could be enacted, passed over, and people would suffer for that. I know from experience in the city of Kitchener. We've had numerous occasions where things have backfired, and what it has done, is to raise the issue that employment equity is quotas, and it is not quotas. We've struggled very hard to put the impression on that it's based on ability alone. There is not one member of any of the designated groups who's ever said: "I do not want to have fair play. I want to have some special privilege." I am quite concerned about this section and I think there are quite a few people and quite a few groups that have shared this concern.

**Mrs Witmer:** I'm not sure what you're saying. Are you indicating that you want to see some reference to the fact that the merit principle would be present at all times, or what are you saying? I know the one situation that you're referring to. People honestly believed that they were behaving appropriately, but it turned out that it wasn't in accordance with the employment equity regulations.

**Mr Fernandez:** You see, the entitlement section, section 1, which speaks to the essence of the bill—I will not use the word "merit," because people have used that to their means and devices. I specifically said that basically I would like to make sure no individual will be denied employment opportunities or benefits for



reasons unrelated to ability. That is the entitlement of every individual, whereas right now the way section 1 states is based on the Human Rights Code. So you're asking for people to read the essence of the bill through another bill, and it's misleading. It is the preamble. It's sort of an introductory, giving the principles of the bill, and that should be stated very clearly.

**Ms Harrington:** Thank you for your presentation. You had a very interesting conversation with Ms Witmer, and I hope she will carry the message forward to her caucus, what you just said to her, that this is not quotas, and hopefully they will all support this bill. She may have a lot of explaining to do to them.

I really enjoyed you mentioning here that the question is, is this real change or more of the same? From my point of view, this has to be real change. This is why I got involved in politics. This is why our government is here, to make real change for social justice for the people of Ontario, and this bill is a very important part of our social justice agenda. Everyone knows that.

You mentioned here a quote, and I would like to use this more often when I talk about this bill because I think you have put it extremely well. When you're speaking about merit, you say here, "Each individual is entitled to be evaluated on criteria that bear a demonstrable relationship to successful performance on the job." That message has to get out there, and that is what we are talking about, and that is not what has been done in the past.

**Mr Fernandez:** I agree with you. Our committee and I personally have sat on a review of the city of Kitchener's firefighter hiring, and that did create its share of controversy, the point being that they did use criteria that they could not demonstrate had any relation to the success of the job. But yet the principle was used down there.

So that is why I'm going to play with words down here. Let's get down to real definitions and use that, because we are talking about drafting a bill. Every member around here in this committee has said they support employment equity. So now that we've established that, let's go and work on the exact wording so that it's satisfactory and it means real change.

**Ms Harrington:** Can I ask you two questions or comment on two things? We have had various people before this committee who are part of the designated groups who believe that seniority will in fact help them to be dealt with equitably once they are hired.

Secondly, there's a certain timetable laid out for the process in terms of 18 months or two years etc, and also the number of employees in a company, the size of the company. Would you have any comments about those aspects of the bill?

**Mr Fernandez:** The most important one is about seniority rights. I'd like to see our recommendations in

a package. We've talked about entitlements, and we've talked about entitlements based on ability.

What has happened locally in the twin cities—we had a seminar on September 30 in Kitchener, and we had a nurse stand up who was transferred, for no reasons of her own but streamlining of services, from St Mary's hospital to Kitchener-Waterloo Hospital, and she lost her seniority rights. Willy-nilly, she suddenly lost all the service she had provided.

Transference between one school board to the other and also within the supervisory position in one of the school boards, people were let go because of cost-cutting. That's fine; I'm not complaining about that. But the method used in selecting the people was not based on ability. The point made was: "Well, that's how it's done. This person is more senior."

So while some designated groups have said that, this is the public forum, and it brings me to the point about draft regulations. Here you can hear one designated group, another employer, myself, people from the community, coming and telling you different things, and you on balance have to go and pass this act. So I still strongly uphold my view, despite what others might say about seniority rights. But I say this because I bring it up front here to the Legislature, hoping you all will bring this out in balance. It's the common good that we're looking forward to.

**Mr Winninger:** I'd like to explore with you your recommendation that some of the powers which would be enjoyed by the commission to order compliance with the act might be transferred to the tribunal. I'd like to know your reasons for that. I'd also like to pose a potential problem to you in that if you vest in the tribunal the right to order compliance, you're, in a sense, creating something of a one-tier system, and where do you go once the tribunal's made its order? Well, you probably have to go to the courts, which are already quite busy and backed up as it is.

**Mr Fernandez:** And I've said that there should be only a narrow review by the courts and the Ombudsman. I do recognize that. I thought about this very seriously, and I think one of the key features we realize with employment equity is that we have to develop partnerships, and the partnerships right throughout the province of Ontario would naturally lie in the Employment Equity Commission. But if that same commission is going to be passing orders or ordering compliance with any potential employer or any person that it's dealing with, it will be then excluding them.

Now, in regard to making the tribunal a non-review body: We have our federal court, for example. People who have a patent law abuse, they go to the federal court. If it's heard by a single judge, it's subject to a review by a senior panel consisting of three more judges.

If you've followed even the human rights task force, the recommendation down there has been very clear. It has tried to separate the punitive actions so that's considered separate so that we can actually proceed on with the job with a much more streamlined, friendly Employment Equity Commission, and not just friendly to designated groups; friendlier to everyone. It should stem from a vision of inclusion which includes employers and every group, because we do not want to see barriers being put up for others so that five years from now we're talking about another designated group. I mean, God forbid if that ever happens. We should not be having those passed back and forth.

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**Mr Curling:** Thank you very much for a very good presentation. It's rather thought-provoking. As a matter of fact, when Ms Witmer talked about goals and timetables, as you said, here's the arena for debate, to get the definition out clearly, to know that we have a time frame and we have goals, and those goals really mean quotas, because later down the road we don't want that to be defined in the courts, and that is what it's all about. So we hope that could clarify it.

I want to go back a little bit to see if I understood you properly. Did I understand you to say that seniority rights is a barrier to employment and it's really unrelated, as you said in your brief here, to performance or ability? Did I understand that properly?

**Mr Fernandez:** Yes, it's very clear. Seniority rights, especially in the situation where people are being transferred from one hospital to another when there are staff reductions to be made, if it's based on seniority alone and not on ability, it flies very much in the face of the spirit and the essence of employment equity.

**Mr Curling:** Very precise, because as I listened to Ms Harrington, I was wondering where that was leading. I wanted to be very clear about that because of course if someone has seniority within a company and they are properly trained, they don't need to talk about seniority. If the employer or the environment created training, the ability will completely exceed the seniority. I presume we use it as a protection at times, and we hope that the unions don't do that. I was surprised that it was placed inside the legislation itself.

On page 10 you spoke of the role of the tribunal and you said, "Claims regarding human rights or employment should be centrally screened...." Maybe you did answer that, but I'm not quite sure. Would that be another bureaucracy we're talking about, say that we put it somewhere else, that it could be screened before we can deal with it?

**Mr Fernandez:** I wouldn't want to get into bureaucracy-bashing, because they are individuals just like you and me and they work very hard. So it does not really matter. What I'm really concerned about is a person who has a claim, whether it's an employer or an

employee, that they get a timely treatment on the case that they have.

Now, if they have to go first to the Human Rights Commission, get transferred to employment equity and they determine that, no, this is not an employment equity concern and it gets transferred back, or vice versa, if it goes to employment equity first and then Human Rights and back—there is a lot of time delay involved in that. And clearly, the reason why employment equity has come in is because it's specific to employment. It enshrines the values that the province of Ontario believes should be put in place and protected and maintained in its laws. The Human Rights Code is far more extensive and it's not specifically related to employment.

**Mr Curling:** I want to be crystal clear. It has nothing to do with bashing bureaucracy; it has to do with exactly what you said. An individual complainant has a case and what that person would like to know is: "Will my case be addressed as quickly as possible? If my justice is delayed, it will be justice denied." And you know many cases in Human Rights that take a long time. It's not a matter of bashing the bureaucracy. The end product is, it took too long and the person has been destroyed mentally, physically, sometimes financially in that process.

Employment equity, which I think is needed—and I think there's a commissioner needed also for the Employment Equity Commission. What is not clear is, did you in your research and assessment of this legislation find that, if there's something more that could be done—in other words, we have the Cornish report out there that is saying that we need restructuring of the Human Rights Commission; then we have the Employment Equity Commissioner; then we have the Pay Equity Commissioner. Do you see a tribunal putting together equity commissioners in one area rather than having all these commissions out there? There'd be no confusion really about where someone should go to have the redress. Do you see a coming together of those equity commissions?

**Mr Fernandez:** That's one possibility, but be aware that you might end up confusing the matter. Employment equity, pay equity, are all very specific concerns. The use of the tribunal, in my judgement, once employment equity plans are put in place by employers, it would be only in cases of disagreement. I mean, I'm talking about mediation and adjudication. So the tribunal will be playing two roles. I'm not sure if pay equity, human rights and whatever other commission or tribunal we might have down there has the same roles. That's something that this committee can go and examine.

But the key point is to remember, do not shuffle people back and forth, whether they are employers or employees. I think that's the key objective to keep in mind on this.



**The Chair:** We ran out of time; I'm sorry. Mr Fernandez, thanks for the contribution you have made today to this committee.

ONTARIO ADVISORY COUNCIL ON  
DISABILITY ISSUES

**The Chair:** The Ontario Advisory Council on Disability Issues. Welcome. You have half an hour for the presentation and I would ask that you leave as much time as you can for questions at the end.

**Dr Shirley Van Hoof:** Okay. I'm Dr Shirley Van Hoof, chairman of the committee. I have Pat Hatt, Partap Grewal and Shaunna Kennedy as listed on the front of the presentation here as well. They will be able to answer questions.

In the interest of time, during my presentation I will be reading basically from it but will bypass some of the paragraphs and hope that you will have time to review the entire brief. I'll try to indicate where I am so I don't lose people if they're following.

On behalf of the Ontario Advisory Council on Disability Issues, I appreciate the opportunity to speak to you today. As noted by previous presentations, the negative attitudes towards the abilities of persons with disabilities are still out there. Therefore, the premise of employment equity is a good one. In general, council supports the employment equity legislation.

Employers must be educated to see that the hiring of a person with a disability is not a charitable act. Only through legislation can this be reinforced. The legislation is already a year overdue according to the government's own timetable. Council therefore encourages the passing of Bill 79 as soon as possible.

The Ontario Advisory Council on Disability Issues was established in 1975 to advise the government of Ontario on matters of concern to persons with disabilities. Council provides its advice to the Minister of Citizenship, the Honourable Elaine Ziemba, who in turn brings those concerns to the attention of the government. Council members come from different parts of the province, different backgrounds and have different disabilities or advocate for persons with a disability.

I would like to discuss several topics: the act itself, the definition of disability, persons with a severe disability and education.

The act itself: Members of council believe everyone of working age in Ontario has an equal right to job opportunities and full realization of their employment potential. Paid employment improves a person's sense of self-worth, creates an avenue for socialization and allows support networks to develop outside the family. Work provides a challenge and a purpose in life and allows people to be financially independent. Work gives a person on social assistance programs a means of becoming independent.

Many persons with disabilities are still not able to find work, and those who do are often underemployed in low-paying jobs. Council's report *Workable*, which you have received, contains a list of barriers to employment, including systemic barriers that work against the recruitment and employment of persons with disabilities, such as lack of accessibility to information regarding opportunities for employment, which the previous speaker spoke about.

Other barriers are inadequate education and training for persons with disabilities; lack of coordinated placement services; obstacles in the workplace, including lack of physical access, reliable transportation, independent living assistance, assistive devices and reluctance to make workplace and job modifications.

Other barriers are government policies which discourage persons with disabilities from pursuing employment opportunities and attitudinal barriers which assume inability rather than abilities. Many employers, educators, union officials and placement and community agencies have little awareness or understanding of programs and policies which would assist a person with disabilities to secure employment.

For employment equity to work for persons with disabilities, these barriers must be eliminated. In this regard, council believes that the Employment Equity Act is strong. The act focuses on the education of employers. Many barriers to recruitment, hiring, training and promotion can be eliminated by making each workforce review employment policies and practices. The Employment Equity Commission should insist that each workplace develop a plan to eliminate such barriers.

While council believes that a strength of the act is that it does not enforce quotas, as quotas do not take into account that different regions have different labour pools, council does believe that standards must be developed and that these must be strict. Council has little faith in guidelines set up by employers or voluntary employment equity programs. The federal government's employment equity plan for Treasury Board found that voluntary employment equity produced only a 0.6% hiring rate of persons with disabilities.

Council believes that the bill gives too much power to employers to set their own goals. Council contends that employment equity plans should be submitted to government for review and approval in order to ensure that they conform to standards set down by the Employment Equity Commission. Numerical goals must include the hiring of persons who fit into more than one category, such as a woman with a disability. Employment for women with disabilities has increased by only 0.2% during the late 1980s. Numerical goals should reflect these doubly disadvantaged groups.

Council recommends that standards be developed. Employers developing their own employment equity

plans must follow these standards. This act seems to rely too much on the goodwill of the employers. While the employers are expected to comply by setting their own numerical goals and timetables, these plans are then registered and filed. Reports are to be developed every three years, but in the meantime companies are not monitored and their progress not reviewed unless a problem is brought to the attention of the Employment Equity Commission. Council recommends that employment equity reports be submitted once a year. Council believes that the legislation should have stronger time frames.

Council recommends that 5- and 10-year goals should be established for each of the geographic areas to reflect a representation rate of 8% for persons with disabilities within 10 years. The 8% rate reflects the current representation of persons with disabilities of working age in Ontario.

Penalties: Strict enforcement measures should be in place to monitor the goals and targets set by employers. If employers are found to be in flagrant violation of the employment equity plans, then penalties should be imposed. Revenue from fines should go to support a fund for employment accommodation devices. Past experience has shown that countries that do use harsh penalties have much greater success, such as Germany's grant levy system and Sweden's employment equity system. Employment equity in Quebec has been unsuccessful because employers are only liable to monetary fines and no employers to date have been fined, to our knowledge.

Sanctions must be of sufficient size to act as an effective deterrent against further non-compliance or employers may choose to pay financial penalties and not bother to comply with the legislation. Council recommends that sanctions be imposed in relation to a company's payroll or gross revenue.

As far as the collection of data goes, council supports the self-identification of disability. Open communication and education about employment equity and rights of the employee will ensure accurate data collection.

Data for part-time, contract, casual and full-time work should be kept separately since employers may try to augment their results by hiring persons with disabilities for part-time positions. Also, positions and promotions of employees with disabilities should be listed to ensure that persons with disabilities are not segregated at the lower end of the scale.

Council feels the definition of disability used by the federal government is too broad. Council is encouraged by work being done by a subcommittee of the commission's working group on employment of persons with severe disabilities regarding a definition of disability.

Skipping to the next page, council recommends that a strict definition of disability be developed and a guide

be issued to employers to assist in its interpretation.

Severe disabilities: In 1991, Statistics Canada's health and activity limitation survey, HALS, reported that the unemployment rate for Canadians with disabilities was 14 per cent in 1991 compared to 15 per cent in 1986, a decrease of only 1%. But what's been happening between 1986 and 1991 is that more people are reporting mild disabilities. Of the increase in employment, about 82% is due to people with mild disabilities. The rates of employment for people with severe disabilities haven't improved. Council recommends that special measures be incorporated into the Employment Equity Act to encourage employers to hire persons with severe disabilities.

For instance, employers should negotiate the right to bypass certain requirements such as union regulations, eliminate many of the systemic barriers such as health qualification for health insurance, allow part-time work for a full-time position so that someone with a disability could job-share. Barriers in contracts must be eliminated.

Going to page 9, the employment equity office should work with the Ontario Training and Adjustment Board to ensure that reasonable accommodations exist for persons with disabilities and that training programs are accessible.

Council commends the Employment Equity Commission for looking at systemic barriers for persons with severe disabilities and recommends that the Minister of Citizenship liaise with the Minister of Community and Social Services and the Minister of Education and Training to ensure appropriate education of teachers and social services staff about disability issues.

In education, many of the disadvantages faced by persons with disabilities in obtaining employment stem from deficiencies in their education and skills training. The 1986 HALS data supports this conclusion.

Council believes that students with disabilities may need more resources and encouragement to get an education. Council recommended in its report *Workable* that the Ministry of Education, in conjunction with persons with disabilities, parents, educators and school boards, should conduct an extensive review of the implementation of Bill 82 and evaluate its impact on students and school boards. Such a review should assess the funding and resources provided by the Ministry of Education and school boards and measure the competency of children leaving the school system.

Need for transferable skills: Literacy and numeracy programs should be available and accessible to persons of all abilities. There is an urgent need for better training of teachers and guidance counsellors regarding students with disabilities and available opportunities. Council has a report on this subject at the printing stage.



At the bottom of the page, council recommends that cooperative education programs be made accessible and that funding be provided to cover the cost of necessary personal services including readers and interpretative services for students during work placements.

Council recommends that the Ministry of Education and Training implement and fund apprenticeship programs that specifically target students with disabilities and ensure that such programs are accessible.

School-to-work transition planning for all students should begin as soon as they enter secondary school. Career options should be explored and students made aware of course requirements.

Council recommends that admission policies and requirements of universities and colleges be reviewed and that any barriers faced by qualified students with disabilities be removed.

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Council recommends that goals and timetables be established in order to make all universities and colleges in the province accessible to persons with disabilities.

Supported employment programs were developed in many areas because of dissatisfaction with sheltered employment programs. Supported employment is the preferred alternative to sheltered workshops because it trains in a real community work setting. Most supported employment projects are currently targeted at those with developmental disabilities. There is a need to expand and modify these programs so that persons with physical and psychiatric disabilities can participate.

Council would like to see more funding towards community employment projects such as Project Work, a supported employment program, while existing funding to sheltered employment is maintained.

Council recommends that training programs be developed for professionals to break down attitudinal barriers and increase knowledge of technical devices, modifications and services available.

In conclusion, council has a great concern regarding the current fiscal climate. Hiring, promotions and wage increases in the broader public service are virtually at a standstill. Some persons with disabilities were hired under affirmative action programs and now find their jobs in jeopardy due to the recent reductions in the workforce.

Council recognizes that employment equity legislation is an important step in the employment of persons with disabilities. However, at present there are virtually no services or resources out there for persons with disabilities. The Ministry of Citizenship's consultation paper, the Report of the Interministerial Working Group on Learning Disabilities, attests to the lack of resources for persons with learning disabilities. Council contends that without these resources Bill 79 will not be successful in achieving its stated goal.

Persons with disabilities have waited too long for fair access to education, training and employment. Finally, with the introduction of this employment equity legislation, they should have the same opportunities as all other citizens.

Council supports this employment equity legislation, with the aforementioned alterations, and eagerly awaits its passage and implementation. I thank you for the opportunity to speak today.

**Ms Carter:** I'd certainly like to welcome you all very warmly here. I think I've met several of you before and I always remember Pat's keynote speech at the Learning Disabilities Association of Ontario convention, which was very moving. I certainly learned a lot from that. I think you've expressed yourself so well in this report that it almost removes the necessity of asking any questions, because you have explained things so well.

But I'd just like to draw you out a little bit more on the question of specific measures for people with severe disabilities, because obviously this could be a problem, that people with milder disabilities would tend to displace people with severe disabilities. I understand Dr Van Hoof is actually chairing the committee that's examining issues of persons with disabilities. I wonder if you'd tell us a little bit more about the kind of issues that you're addressing and the kind of recommendations that you might come up with.

**Dr Van Hoof:** We're actually in the middle of the fray of that. I'm co-chairing with Juanita Westmoreland-Traoré. We're just in the middle of getting to the point of making recommendations on modifications to the bill that might be made to include persons with severe disabilities. We hired a consultant. We've not had our first meeting with them yet as to what we can do, but certainly that's an important part of it, to bring the severely disabled into the workforce as well.

**Ms Carter:** How would you change the definition?

**Dr Van Hoof:** We have a special subcommittee working on the definition, because that is very important. In the past it hit the newspapers that banks were using glasses as a disability to pad the number of persons they had hired etc. The other thing that happens sometimes is that they will hire someone who has a disability on a six-month contract, then let them go and hire someone else with a disability. That counts as two for the year whom they've hired. So it looks like they've hired them for a full year and they have not. They've found means of padding the books, basically.

We heard a comment earlier about distrust of employers. It's with good reason. There are responsible employers out there, certainly, and we recognize that, but there are 1% or 2% who really make a bad name for everyone when they do these kinds of things.

**Ms Carter:** That leads into the one other point I wanted quickly to raise. We have just been told by a

previous presenter that most companies will want to comply with employment equity and they suggest we keep the big stick, the sanctions, for the few who don't, whereas you seem to be recommending stronger sanctions all around.

**Dr Van Hoof:** Again, the stronger sanctions would be for those who abuse the system. Hopefully, there will be few, but we want those sanctions to really hurt when it comes out, especially for repeat offenders. I think it's important they know that if they get caught once with the hand in the cookie jar, as they say, they get it slapped. The second time they may lose the hand sort of thing. That's the type of thing we would like to see.

**Mr Partap Grewal:** I'd like to take the example of Germany and Sweden, where they really slap the wrist hard by taking into account the gross income or the total salary. That really hurts. That's an example of using both the carrot and the stick. The good will go along, but some will have to be reminded.

**Ms Pat Hatt:** Another issue would be if the penalties or the poor press is strong enough, especially the penalties, that internal measures can be taken. I know a large corporation—was it Via Rail?—made substantial changes when it was suggested it wasn't an equity employer. They did enormous changes in a time of restraint. I also know that an organization like the federal government is using it in its management appraisal system, so that directors and managers have to show their progress in order for them to meet their targets. That is because of the fear, one would hope, of a bad press.

**Mr Curling:** Thank you very much for your presentation. It was long awaited. Quite a few of the disabled groups came to see me and expressed their concern that the bill itself fails really to address the needs of those who are severely disabled, and I was looking forward very much to hearing that input here.

As you said, the rate of employment for persons with severe disabilities really hasn't improved. I was concerned, though, and maybe you can help me through part of that recommendation on page 2 where you say:

"Council recommends that 5- and 10-year goals should be established for each of the geographic areas"—I have no problem with that—"to reflect a representation rate of 8% for persons with disabilities within 10 years." The other part I was wondering about is how resistant the group would be or how practical it would be that, "The 8% rate reflects the current representation of persons with disabilities of working age in Ontario."

Because it's taken in geographic areas and some areas may not reflect 8% severely disabled individuals, for that to be reflected in the workplace, do you see any problem with that?

**Dr Van Hoof:** Again, I think flexibility comes into

this. When we ask for goals and timetables rather than—anyway, we've said that different regions will have different representation in the workforce, so I think there has to be flexibility. Certainly, in some areas, there is more than that, such as in London, Ontario, because of the medical community that is there. We have rehabilitation for persons with head injuries and such. Also, our city is more accessible than the neighbouring towns, so there is an influx of persons with disabilities into the city. The representation of persons of working age who have disabilities is far greater than 8%. I think the workforce has to be reflective of the community and therefore the flexibility should be there.

**Mr Curling:** So the approval of the plan concerned the fact, as you say, that 8% of the workforce would be severe-disabled.

**Dr Van Hoof:** Not severe-disabled; 8% of any disabilities.

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**Mr Curling:** Other groups have spoken about subgroups, and most of them were talking about racial groups. Do you see yourself in the disability designation being looked at as subgroups?

**Dr Van Hoof:** The working group is attacking that right now in trying to decide. We don't think we want subgroups, but we do want special measures, perhaps, to be attached to the employment equity group. We certainly don't want to be outside the Employment Equity Act, because anyone who is outside usually gets marginalized and it usually does them a disservice and that is true in any group. Once you separate them, even in, say, social assistance—they were trying to separate disability group in social assistance. They wanted them as a special group, they called them. Any time there's a special group there's usually a downside to that. So we would sooner be in the mainstream attached in some way to the act itself, with severe disabilities. We want to be attached to the main group. Whether we offer the employers special dispensation in some way, such as in the grant levy system in Germany—they have special measures that if they employ people with severe disabilities they get tax credits or whatever it is; I think it is, yes. We would like some kind of bonus for employers who will do that, but I think it's important that they be maintained within the act itself and not be outside it.

**Mr Curling:** Yes. Doctor, more than any other group, your group requires a proper coordination of other factors of the ministry's support. In other words, as you talk about the ministry of skills or ministry of training, or whatever designation it is, Community and Social Services, and whatever other group that, as a ministry, would have to coordinate that, do you think it would be helpful, before the regulation and the legislation be completed, to have a presentation by those ministries talking about the support given to this group—so that we understand, when we write the



employment equity plan, when companies or the public sector are writing their employment equity plan, that they know there is support there? When you speak about education, the other groups normally have to get over certain barriers, but beyond those barriers let's say, if you have a woman who is black and physically disabled that—oh, another barrier there. Would you think it would be very helpful if the ministries that are associated in helping this disability access to employment equity make a presentation, come openly and say, "Here is the support we give in order for our employment equity to be more effective for the disabled?" Would that be helpful to us?

**Ms Hatt:** I think that might be helpful. I think in the long range what we have to do is consider the continued role of the Employment Equity Commission in looking at and finding new barriers, especially in the area of education. Certainly, we're aware of many of them now, but there will be more and more uncovered as we look more and more at why employers are saying, "We cannot find people to be hired." While I think it's a good idea, obviously, for them to communicate now, I'd like them to continue to communicate and I'd like to see a means whereby the Employment Equity Commission could continue to communicate with them if, in fact, it's seen as a problem for employers or employees.

**Mrs Witmer:** Thank you very much for an excellent presentation. I appreciate your getting the information to us before today. I had a chance to review it. You've indicated here that there needs to be a strict definition of "disability." Did you give us a definition? Do you have a definition?

**Dr Van Hoof:** No, we do not. The working group of the Employment Equity Commission, working with employment of severe disabilities, they are still working on a definition that will be acceptable, because the federal definition is too lax, I believe, and other definitions that we've heard are too restrictive and they're working very hard. There's a subgroup working on that alone. We look forward to that completion. That should wrap up within the next month and, hopefully, we can get that to you at some point.

**Mrs Witmer:** Okay. Obviously it's absolutely critical that there be agreement on the definition.

**Dr Van Hoof:** And it's one that we want all governments to accept, the federal and the provincial, for their employment equity legislation.

**Mrs Witmer:** Yes, and I think it's important too that there would be that harmonization and it would be a consistent definition. You mentioned education and I've been involved in that system for a long time. I can remember Bill 82 and the changes that were made to the system, although I know there's still a long way to go. You talked about the need for cooperative education and, personally, I've certainly seen the benefits but I would agree with what you're saying. There are very

few of those programs available at the present time to the disabled community. I know we had hired an individual who dealt exclusively with that because it's a big job to convince employers that they need to become involved. But, I'll tell you, it was a very successful program and certainly, once employers were involved, it was amazing, they were asking for additional students as well.

There's a lot of education, I guess, involved with this bill and everything else that's going to happen, so I think your recommendation here regarding some of the educational changes is excellent.

I guess that brings me to another topic: This bill is not going to achieve fairness and equity in the hiring and promotion practices without a lot of other things happening as well. I know in the meetings I've had with the disabled community, that's what I keep hearing: "Elizabeth, there are other things that need to happen as well." Could you expand on what is absolutely critical?

**Dr Van Hoof:** We need a skilled choreographer to produce this dance, because I think it has to involve education, the Ontario Training and Adjustment Board, employers. There's so many stakeholders in this that you really have to have everyone involved.

Transportation is one of the main things that's involved in this, because we don't have reliable transportation either to get to school or to get to work. That too has to be involved, because no employer is going to put up with you coming in late. Certainly, classes start without you, they just go on. Your work may wait for you but your classes don't, so that is vital.

**Ms Hatt:** Obviously the coordination is enormous: personal support systems that people may need, the availability, the portability of them, the portability of their assistive devices. If you are an employer and you hire somebody, it could be an obvious burden for a small segment of people who may require extra, additional materials. It would be nice if assistive devices were portable.

There are all kinds of portability issues. If you move from employer to employer, you don't have to start all over again to have the kind of accommodation that you need if some of the equipment could be taken with you. Maybe something could be on lend-lease from the Employment Equity Commission.

Obviously there's an enormous need in the area of training to ensure that there are programs that understand that people with learning disabilities and other disabilities may learn differently and that they cannot take the same kinds of programs.

I really liked your comments about co-op education and that sort of thing but almost exclusively, from what I can see, it's only students with developmental disabilities who have an opportunity to do co-op. Students with other disabilities often, because of their timetable

and because of the fact that it's difficult to bus them to a location, have to find accessible locations.

These are all obstacles that should not be there. A good counsellor, who understands that all the students of the school should have access to co-op, should be putting those things in place. There is a tremendous amount of need.

**The Chair:** Thank you very much. We've run out of time. We found your contribution very helpful and informative and we thank you for coming today.

The committee is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1659.









*Continued from overleaf*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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\*Mills, Gordon (Durham East/-Est ND)

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Tilson, David (Dufferin-Peel PC)

\*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Callahan, Robert V. (Brampton South/-Sud L) for Mr Chiarelli

Carter, Jenny (Peterborough ND) for Mr Malkowski

Fletcher, Derek (Guelph ND) for Mr Duignan

Sterling, Norman W. (Carleton PC) for Mr Tilson

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

### **Also taking part / Autres participants et participantes:**

Bromm, Scott, policy adviser, Ministry of Citizenship

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

### **Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service

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## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 26 August 1993

# Journal des débats (Hansard)

Jeudi 26 août 1993

Standing committee on  
administration of justice



Comité permanent de  
l'administration de la justice

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman



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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 26 August 1993

The committee met at 1001 in room 151.

## EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

## ALLIANCE FOR EMPLOYMENT EQUITY

**The Chair (Mr Rosario Marchese):** I welcome the Alliance for Employment Equity representatives. I just want to briefly say you have half an hour for your presentation. Many of you have witnessed a lot of the presenters in terms of how they structure it. We'd like to leave as much time as possible for questions and answers. I leave that to you in terms of how much time you will want to allow for that. Please begin. Whoever is the spokesperson can introduce the others.

**Mr David Onyalo:** Thank you. I'll start the introductions. To my left is Colin Browne, who is a board member of the Alliance for Employment Equity, and Margaret Hageman, the coordinator for the alliance. To my right is Daina Green, of the Pay Equity Coalition, Stephanie Allen, of the native centre, and Eric Schryer, with the Disabled People for Employment Equity.

Having introduced the people who are representing the alliance today, I would just like to say who we are. The Alliance for Employment Equity is a coalition of community groups province-wide.

**Interjection:** Introduce yourself.

**Mr Onyalo:** I have just been reminded to introduce myself. My name is David Onyalo. I'm with CUPE. It's a province-wide organization that has brought together equity-seeking groups that have been fighting for employment equity in this province over the years. As a result of our coalition building, we've become one of the most prominent groups that have been fighting for employment equity. The question is, why did we get together?

The reason we got together was the realization that systemic discrimination can be fought by individuals or individual organizations. Systemic discrimination has to be fought through a collective effort. In terms of process, I would just like us to be on the record to say that we do support the principles of employment equity and that we applaud the objectives of Bill 79.

Having said that, I'll say something that will come as no surprise to those of you who have been following the

discussions around employment equity; that is, that Bill 79 is a weak bill. The regulations that have been introduced that accompany this bill are confusing at best and don't add anything to the bill.

We'd like to make it very clear that although we support the principle of employment equity, we don't support Bill 79. We feel that the discussion that's going to follow this set of hearings will convince you to make those changes that are necessary to strengthen Bill 79. Later on, during our presentation, some members of our group will be giving you information on areas that we suggest some changes.

We also believe that the approach that has been taken by the government, which is a little-by-little approach, is not going to work. The bill has to be effective now for it to have any meaning; otherwise it will just be a wasted effort.

I'd also like, before I go to the members of our group, to ask you to have—we've already given you the brief, the brief that we've presented to you as part of your record, including the presentation from the native centre.

**Ms Stephanie Allen:** My name is Stephanie Allen and I'm with the Native Canadian Centre of Toronto. I'm here today to address an issue of process. But first as a bit of background, the Native Canadian Centre of Toronto, a member of the Alliance for Employment Equity, is an independent native friendship centre and among the oldest of urban agencies serving the needs of native people in Toronto. Friendship centres play a major role in both representing and serving aboriginal communities in urban centres.

The 1991 census has revealed that greater than 80% of the native population in Canada lives off-reserve. In Metropolitan Toronto the aboriginal population is estimated at 65,000 people, the largest concentration of native people anywhere in this country. This population includes status and non-status Indians, Metis and Inuit.

Yet, in the words of Bill Lee, the current vice-president of the Ontario Metis and Aboriginal Association, "Native people in Toronto are invisible and in the city being invisible is equal to non-existence." This invisibility is compounded by the lack of a strictly defined political voice. The traditionally recognized political organizations, including band councils, the political and territorial organizations, and the Chiefs of Ontario, do not represent off-reserve and non-status native people. Although off-reserve communities enjoy none of the benefits of the Indian Act, off-reserve people face the same social ills, including racial dis-

crimination and high unemployment, as do native people living on-reserve, yet the human needs of the off-reserve people are often forgotten in the quagmire of various government jurisdictional responsibilities.

As a result, the Native Canadian Centre of Toronto seeks to address the needs and advocates for the rights of the native community here in Toronto.

The issue: This brings me to the purpose of the presentation, the total lack of notification concerning this standing committee process by the government of Ontario. After consulting with many other native organizations in the province we located only one, the Chiefs of Ontario, who were contacted, and then only one day prior to the deadline for application. The native centre only received word of this process through the efforts of the Alliance for Employment Equity.

The native community in Ontario, to the best of my knowledge, is now left in the position of having only one scheduled deputation by a native organization, that of the Ontario Native Women's Association. We at the native centre have been informed that we can submit a written deputation and sit on a waiting list hoping for an opening to be available.

This is wholly unacceptable. I should not need to explain that the aboriginal community is one of the designated groups targeted by the legislation, that this legislation will largely affect off-reserve aboriginal people and in particular the native population in Toronto. I should not need to remind the government of the Statement of Political Relationship and our inherent right to self-government, which Premier Bob Rae has publicly acknowledged applies to Toronto's urban aboriginal community.

We should not be an oversight in this process and we should not be relegated to second-class citizenship admitted through the back door with a written deputation. From the outset of the consultation process concerning employment equity, native organizations across the province have raised concerns regarding restrictive time frames and lack of adequate consultation.

Employment equity seeks to redress exclusion and discrimination. The preamble to the act speaks of equality of results rather than treatment. If this process is any indication of the results our community can expect to see from Bill 79, we indeed have serious concerns that need to be heard.

The Native Canadian Centre of Toronto demands that a scheduled time be allotted to make an oral deputation. We also suggest that there be flexibility in the current schedule to allow other native organizations to make a presentation if so desired, and that the native centre's name be added to any contact lists to ensure that this unfortunate situation is not repeated.

**Ms Margaret Hageman:** The Alliance for Employment Equity responds to objections to strengthen

employment equity legislation.

You've heard that systemic discrimination is an invention. We say that systemic discrimination can be verified in many ways, from Judge Abella's 1984 royal commission report, and the effects of systemic discrimination include a persistent and significant underrepresentation of equity-seeking groups in the workforce, independent of merit or readiness for the job.

You've heard that we need a bill that focuses on awareness, not results. We say that an incremental approach will not work. It will be many years even before we see the first results. Let's do it right the first time.

**1010**

In addition to our understanding that this extension of human rights should not be implemented in a piecemeal way, there is also danger that weak legislation will produce wasted resources and have little intended effect due to lack of accountability and clarity.

You've said that many small employers would be overburdened by legislative requirements. We say that if legislation applies to all employers, no one will be singled out or disadvantaged. Employment equity is an effective and fair tool of planned change.

You've heard that we should not create preferential hiring practices. We say programs which remedy longstanding underrepresentation of designated groups are not reverse discrimination. They are specifically permitted by the Canadian Charter of Rights and Freedoms and the Human Rights Code. Special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity are consistent with anti-discrimination law.

You've heard that we can't push employers too far. We say that human rights tribunals are already ordering employers to implement employment equity plans. This is an extension of rights which, although already won, are hard to enforce on a case-by-case basis. Systemic problems must be dealt with in a systematic way.

You've heard that numerical targets are quotas and quotas are too strict. We say numerical targets, if set properly, will respect the availability of trainable, potential employees and economic ups and downs. They are not fixed quotas. Numerical goals are necessary to achieve and monitor changes in the workforce participation and retention of designated groups.

You say that employment equity can't fix the whole problem of systemic discrimination. We say that employment equity legislation works together with new training strategies, programs to recognize foreign accreditation and anti-harassment laws. It's one piece of the puzzle in maximizing the potential of all our human resources and in overcoming barriers to equality in employment.



You've heard that people will misrepresent themselves in the self-identification part of the workforce survey. We say that this hasn't happened at the federal level or under the Police Services Act. From these cases we think that it's not likely to occur under this legislation.

You've heard that employment equity is bad for business. We say barrier removal encourages skills and potential of all designated group members to participate to their fullest in the workforce. There is also no danger of displacing people from their jobs, nor does it mean promoting or hiring unqualified people.

You've heard that employment equity legislation will only create another unnecessary layer of bureaucracy. We say that a tribunal is necessary, but it doesn't have to be expensive, if the powers are clearly set out and employer obligations are clear and consistent.

You've all said that you are in favour of fair, equitable employment laws. We say that it's time for mandatory employment equity legislation that's effective and enforceable.

**Ms Daina Green:** We didn't get to Bill 79 just having it spring fully formed into the Legislature. There's been a long road that's taken us here. I'd like to just take a moment to hit some of the highlights. In the brief that you have in front of you, I'm looking at page 4 and I won't refer to all the points, so you may want to follow along.

In 1984, employment equity as a concept was first put into circulation by Judge Rosalie Abella. She advocated very strongly for mandatory legislation in her royal commission report.

In 1986, we had the federal legislation on employment equity. This legislation is much like Bill 79 in its way of operating. It focuses more on identifying the problems and supposedly removing barriers. Like Bill 79, we fear that it will be as ineffective as the federal legislation has been in creating the results in the change of the workforce.

In 1990, the then opposition leader, Bob Rae, tabled a private member's bill, Bill 172, which laid out the content of employment equity plans and mechanisms for achieving numerical targets. It is unfortunate that most of these elements did not find their way into Bill 79. This is a chance for this government to do it right. This is a window of opportunity to create employment equity in a way that is not bureaucratic, but which is effective, which gives everybody the same rules and tells people how to do it.

I'd like to point out a few ways that the structure of Bill 79 may hinder achieving some of the goals. I'd like to refer to the pay equity legislation, because many of the elements in Bill 79 are borrowed from pay equity legislation. One of the ways that there is a mismatch created is in terms of who bargains and who benefits.

Under pay equity, the parties to the plan are the ones who benefit. Under employment equity legislation, many of the potential beneficiaries are underrepresented or excluded from the workplaces, so the parties who will be bargaining the plan may or may not have the perspective of the excluded workers.

In pay equity legislation the larger establishments go first. It was based on a trickle-down principle that if you increase the rates of pay for women in large organizations, then smaller organizations will follow suit. Unfortunately the elimination of discriminatory practices or barriers to members of designated groups in large establishments is unlikely to carry over to small businesses. The message here unfortunately is the wrong one. Only the largest employers will have to clean up their act. The other ones can just sort of do this modified routine that will create very little change.

In terms of monitoring compliance, the commission under pay equity monitors and the tribunal enforces compliance in response to complaints from bargaining agents, employers and individual employees. But given that many of the potential beneficiaries of employment equity are not in the paid workforce and that they're in non-unionized settings, it's crucial that advocacy groups and other third parties be able to launch complaints and be able to make sure that the commission follows up on complaints on behalf of especially vulnerable employees.

I leave these matters with you in terms of structural changes.

I'd like to talk now about some of the content changes we believe are essential in Bill 79. Our changes are laid out in very close detail in the accompanying document, which is a clause-by-clause analysis with proposals for change for Bill 79. We've also supplied a rationale for each of the amendments, using legislative language. But I'm going to now go over the areas of change we've identified as being the most crucial.

All the mechanisms for employment equity must be in the bill. They should not be left to the regulations. That includes content of plans, employment systems review, positive measures, numerical goals and timetables and the posting of plans.

The next point is coverage for all Ontario workplaces. We're talking about no exemptions. We want all workplaces to be covered by the legislation.

Another key point is mandatory numerical goals for all employers, again with no exemptions for the small employers not to have to set numbers. Remember that the numbers are proportions. We're not asking companies to reveal how many people they plan to hire and lay off in a given year; we're asking that they identify what proportion of their opportunities for change they plan to bring in from the designated groups. That is not a violation of any business confidentiality that we're

aware of. As I mentioned before, third-party access to information is a very key change that needs to be brought into this bill.

We also recognize that discrimination in employment also applies to people who face discrimination based on sexual orientation. We don't believe that sexual orientation has to be a group by which people identify themselves for the purpose of setting numerical goals. We're not asking for numerical goals. We believe that barriers to people based on their sexual orientation must be identified and removed.

In terms of how we set the targets, Bill 79 refers to opportunities for entry into categories, which could lead to a certain amount of manipulation of numbers. We favour changing that to "opportunities for change," which would include people leaving, people transferring laterally, people entering into lateral positions, into organizations. That would be a simple word change that would make the whole system a lot more fair, referring to opportunities for change.

In terms of the relationship between collective bargaining and employment equity, there must be clear protection for collective agreements which do not breach the act. We do not want commission officers coming in and getting involved with things in collective agreements that are not the subject of the employment equity dispute and which are not in violation of the Employment Equity Act.

In terms of non-unionized employees, there must be guarantees for participation by representative employees, not the hand-picked ones an employer may pick who think that everything's okay, and those people who participate in employment equity must have a clear guarantee that they will be free of reprisals.

1020

The commission has a very strong role to play in setting the goals and timetables for each geographic region. Those numbers should be set based on enhanced availability data and working-age population census data. That way, we're not seeing a bargaining situation where each employer and union or group of employees decide how many women they're going to let in or how many people of colour they're going to let in. Those numbers would be set out geographically in terms of the representation and the availability in each community. Everybody would be going towards the same standard.

We believe there should be input from designated group members and their advocates in developing the commission and the commission's policies.

In terms of the relation between the Human Rights Code and employment equity, there must be no loss of individual rights.

The tribunal needs to have an effective order power and the tribunal, as we've said, in terms of the commission should be representative of the designated groups.

Finally, one language problem between the bill as it stands and the regulations is that there's an inconsistency in the language with reference to positive measures. Positive measures should be referred to the same way in every part of the legislation. Otherwise it won't be enforceable at all. You must use the same language on positive, supportive measures.

That's a brief list of the major changes which we would see as absolutely necessary for an effective piece of legislation.

**Mr Eric Schryer:** Just to add on the topic of the regulations, so much of the bill has been left to regulations, and also the regulations have already been introduced at a much earlier stage than most pieces of legislation. We also urge the committee to consider doing a report on the regulations. Our understanding is that this is a possibility the committee can entertain and we strongly urge that you do so.

**Mr Onyalo:** Now we'll be happy to answer any questions or clarify any points you may have.

**The Chair:** Thank you. Four minutes per caucus. We'll begin with Mr Curling.

**Mr Alvin Curling (Scarborough North):** Thank you for an excellent presentation, written and orally. I was trying to go through this, trying to keep up with you on the written side as you did the oral, because some of the comments you made were quite relevant.

Because of the short time and there are so many questions, I want to go right to ask for some help with an explanation in some respects. I'll go to number 10, where you said, "Employment equity legislation will only create another unnecessary layer of bureaucracy." That is what is being said. You didn't say that; that's what has been said. Your response is, "A tribunal is necessary, but does not have to be costly if its powers are clearly set out and employer obligations are also clear and consistent."

My question to you and the help I would need in this is that we have quite a few of these equity commissions around, and somehow when we create these commissions or bureaucracy, the feeling out there is that they've done something. We have now addressed an issue. I feel that there is pay equity out there. Let's take, for instance, the Human Rights Commission will be separate to all this, but there are all the other equity commissions. How do you feel about getting an equity commission that deals with pay equity and labour situations and employment equity? Do you see this as a workable commission to operate?

**Mr Onyalo:** I think what you're referring to is something that was brought up in the Mary Cornish report when they were investigating the Human Rights Commission. In terms of merging all the tribunals where there's a Pay Equity Hearings Tribunal, Employment Equity Tribunal or any other tribunal that deals with



systems discrimination, our position at this point is that we need a tribunal to deal with employment equity issues. Once they've built a history of dealing with the issues that come before them, at some point in time, if the issue is cost-effectiveness, that can come later on.

I don't think we're in a position right now to say, "Well, that's going to work," because what we'd like is the Employment Equity Tribunal also to build a case history, a case load, so that when complaints go to the supertribunal you're talking about, at least there has been some consideration to those issues that strictly has to do with employment equity. I don't know if you're talking about cost-effectiveness. In our brief our present position is that we have an Employment Equity Tribunal.

**Mr Curling:** I hear you clear, and I understand it. I'm not trying to force—

**The Chair:** One last question, Mr Curling.

**Mr Curling:** The last question. There are so many things I'd like to ask you. Give me a second here. Mr Chairman, you threw me off.

**Mr Onyalo:** We can be available afterwards for questions.

**Mr Curling:** In a part of your presentation—and I don't have a page here—you said, "It is crucial that advocacy groups and other third parties be assured the ability to investigate complaints."

Do you see that in any way—I've got to say this rather carefully—making a delay for those who want to have a complaint? The concern that one has when we lodge a complaint in any of these bureaucracies is it takes so long. In this situation, I'm rather confused about how long. Have you gone through the file? How long would it take for an individual complainant who has put their case in, who may have gone to the Human Rights Commission first, just feeling it's a human rights case, and then asked to go to the Employment Equity Commission? Have you walked that through and found out how long it would take?

**Mr Schryer:** Actually, maybe to answer that, you've got to make a very clear distinction here between individual complaints, human rights complaints and complaints leading to employment equity systemic issues. There's quite a difference there.

Our sense of it is that if an individual complains, as far as a systemic problem goes, it's very important to have third-party intervention, because we're talking about a remedy that goes beyond just individual people having their rights being abused. We believe that if individual people have their individual rights abused or if they have a complaint, that's what the Human Rights Commission is for.

We have to really make it very clear, and that's why we also believe that there should be a separate tribunal, a separate process. There's a difference between a

systemic remedy on the whole population, on the whole business community, and the remedy for an individual. That's another reason we think they should be separate and why we don't think it's going to be a problem to have third-party complaints dealing with it. If you have proper case management, these complaints will go through quite quickly.

**Mrs Elizabeth Witmer (Waterloo North):** Thank you very much for your presentation. I'm particularly pleased that you're here at the end of almost a two-week period, because I think we've heard many of the concerns that you have spoken to, and they've certainly been reinforced for us. I appreciate your presentation where you focus on "you've heard" and "we say." I think that certainly brings to our attention the fact that, if done appropriately, this bill can be transformed into a piece of legislation that would be workable and that would be fair and that would be equitable. I have to tell you, I really do appreciate the presentation that you've made.

There have been fears of quotas. There have been fears that people are going to be hired who are not properly qualified. On page 8, you indicate here: "Numerical targets, if set properly, will respect the availability of trainable potential employees and economic ups and downs. They are not fixed quotas." You've explained it further, and I did appreciate your explanation. Would you like to expand on that? I think that's one area that definitely the government needs to focus on and make changes, because somehow we have to alleviate the fears that are out there in the public that the media have certainly put forward. It's a real fear and we have to deal with it.

**Mr Onyalo:** I'll try to answer your question as briefly as possible. I think you're right absolutely that there have been a lot of fears in the media that employment equity means quotas, and the thing that comes up in people's minds is then, when you talk about quotas, you're talking about some fixed number that's being imposed by some outside body that says, "You have to employ so many people from this group by a certain time."

Our own sense is that numerical goals and timetables offer us an opportunity whereby employers, with the participation of employees in the workplace, can put in place a planned process. It's flexible in that they will be taking into account the realities of their own workplace.

But, at the same time, they're not going to get into this process in isolation with what's going on around employment equity, so the commissioner or whoever is charged with monitoring has to find a way of ensuring that they're actually doing what they're doing and that's where—in our brief we've talked a lot about the numerical goals and timetables will be set according to some set standard, because that's crucial. Otherwise, if you leave it up to individual employers and employees in

isolation of what's going on elsewhere, then we end up with what is happening to the federal legislation where nothing really happens at all.

1030

So in quick answer to your question, numerical goals and timetables is a flexible system. It's a planned process that takes into account the realities of the workplace and it's also reality in terms of dealing with changes that are taking place in our society. So for those people in our society who are afraid of employment equity because they think it's a quota system, our answer is no, it's not a quota system. There's a lot of flexibility there and it gives the employers and employees the power to make changes and takes into account the realities of the workplace.

**The Chair:** Thank you.

**Mrs Witmer:** I just have one last question. It is important, because I have to tell you I really appreciated the opportunity to sit here and listen. I think it's been an outstanding learning experience to understand what's going on in this province. I've heard you say the aboriginal community was not adequately consulted. Do you believe it's necessary for this committee to extend the hearings beyond the three weeks?

**Mr Onyalo:** Maybe I'll have Stephanie talk later on, but I can't only speak for the aboriginal community because I think that because they are a big part of our society—I mean, the aboriginal issue is much bigger than what you're talking about here. I think it's incredible that a group such as the aboriginal community hasn't been given an opportunity to be heard. I mean, there's bureaucracy and there's bureaucracy, but at the same time it has to be common sense. I think it's pathetic that they have to hear from us that this process is taking place. So in terms of extending the hearings, I'm not going to speak for the other groups, but I think for the aboriginal community there should be an allowance made whereby they can make a presentation, whether it's oral or written. That's as far as I'll say.

**Mrs Witmer:** Thank you.

**Mr David Winninger (London South):** Point of order, Mr Chair.

**The Chair:** Rather than doing that, Mr Winninger, why don't we move on to questions or statements that you might have? Because I was going to clarify, as the Chair, in terms of what we've done as a process, but if you were to do that, that would be just the same.

**Mr Winninger:** I know my colleagues have questions. I just wanted to deal with that specific point because I do know a little bit about it and I hope you'll extend the same latitude to me that you've just extended to Ms Witmer.

**The Chair:** Yes. Go ahead.

**Mr Winninger:** I too was concerned that the Ontario Native Women's Association was the only

group that appeared on the list of presenters, so I did some inquiring into that to find out which communities were written to. I have a list which I could share with you afterwards which indicates the communities and groups and representatives that were written to by the clerk. Of course, all of the communities that met with the Employment Equity Commissioner during her consultations in late 1991 and 1992 were given notice as well.

I'd just like to say this in addition, though, because I think it's important to know. While the aboriginal groups during the consultations expressed broad support for the goals and objectives of Bill 79, and that's why indeed aboriginal people are included as a designated group, there was some concern about the application of the statute to aboriginal workplaces and the need for in-depth consultation was emphasized. Bill 79, as you know, in section 91, allows for the development of separate legislative provisions dealing with aboriginal workplaces. Those discussions have been initiated but they're going to resume in depth, I understand, in September.

As a member of the round table, which the Chair of this committee also sits on, as well as I do, we know the important work that can be done there. So no one is seeking to minimize the importance of in-depth consultation. We would like to see more people at these hearings and that's why I was going to make some efforts to get more groups to come forward, but this isn't the end of it. There is a unique provision that is made to serve the needs of aboriginal people. I don't know if you have a comment on that, but I wanted to get that on the record.

**Ms Stephanie Allen:** In fact, we were part of the 1991-92 consultations at the Native Canadian Centre and I'm quite positive that we weren't contacted, nor have many of the other agencies that I contacted been contacted. For whatever slight, it's now over and done with.

But now what we're asking is at the very minimum to be allowed to make an oral deputation. This isn't anything near what we had hoped for. From the consultations back a year ago, you probably know that the aboriginal community provincially was calling for a moratorium on any legislation that dealt specifically with aboriginal employment equity issues. I don't want to get into that in this forum; we would like to make our own oral deputation. We don't want to take away time from the alliance. But at the very bare minimum, we would like to make an oral deputation, as I said. What the community is actually asking for is much more extensive than that.

**Mr Winninger:** As I said, my colleagues have questions. I can discuss it outside as well.

**The Chair:** Very well. Thank you. One question from you, Ms Harrington.



**Ms Margaret H. Harrington (Niagara Falls):** Very briefly, you mentioned that the committee was not travelling and your concern about that, and that it had not been advertised the way it should be. I just want to tell you that in subcommittee with the opposition parties they held to ransom this committee, they did not want this committee to travel. In fact, they threatened to have the House, the Legislature sit all summer with regard to this issue. So it's incredible what the opposition has done and the kind of political games it has played with this legislation.

I want to ask you about the regulations and what is in the bill. That has been raised several times by various people. I want to call upon the ministry spokesperson to clarify what the status of the regulations is as opposed to what is in the bill in a court of law. Mr Chair, could we have the ministry person, please?

**Mr Scott Bromm:** Shall I just—

**The Chair:** Yes, that will be fine.

**Mr Bromm:** I know the issue has been raised that in a court of law if a challenge is made to the legislation, in fact the court will only give credence to what is in the legislation and ignore what is in the regulations, but that is not the case. A regulation has equal legal effect to what's in the legislation. The legislation refers specifically to the regulations, and if a regulation is in place, it has equal binding effect.

**Ms Harrington:** Would you like to comment, sir?

**Mr Schryer:** Yes, I'd like to make another comment to that. If something comes before a court of law to a tribunal and there are no regulations on a particular part of the statute, that could create quite a lengthy time period, because then the tribunal, the court, will have to define the regulation and the process, so to speak. In many cases, you know, a case we dealt with in months can take years to work out.

**Mr Onyalo:** I'd just like to comment.

**The Chair:** Okay.

**Mr Onyalo:** I would just like to say that this committee has the power to make a report, it's our understanding. We are really concerned that this due process is taking place, the regulations process and the bill, and in our brief we've made several suggestions whereby we feel that there are a lot of substantial issues that are in direct relation that should be part of the bill. It's our understanding that this committee has the power to write a report around the regulations.

**The Chair:** Okay. We've run out of time, unfortunately. I want to thank all of you for coming and thank you for your informative and cogent presentation. Mr Mills.

**Mr Gordon Mills (Durham East):** While we're changing presenters, can I just have a point of clarification? I'd like to say that there was some suggestion by the opposition that there were several equity-based

commissions. I'd just like to put it on the record that there are only two: the Human Rights Commission and the Pay Equity Commission, for the record, Mr Curling.

**The Chair:** Okay.

#### NATIONAL ASSOCIATION OF WOMEN AND THE LAW

**The Chair:** The next presenters, the National Association of Women and the Law, Ms Erickson and Ms Kilgour. I'd like to welcome both of you to this committee. You have a half an hour for your presentation. Please leave as much time as you can for questions and answers. Begin any time you're ready.

**Ms Maureen Kilgour:** Hi. My name is Maureen Kilgour, and beside me is Kate Erickson. We're with the National Association of Women and the Law, which is a national, non-profit feminist organization that's concerned with legal research and law reform. One of the mandates of NAWL is to promote equality for women through law reform, so this is a very good opportunity for us to comment on the bill before us.

What I'd like to do, first of all, is to make some general comments about the legislation, give you our overall impressions and sort of highlight a few of the concerns we've raised in our brief, which you probably got yesterday and spent all night reading, hopefully, and after that Kate will make additional comments on some of the other areas of concern that we have. So if that's okay, we'll proceed that way. If there are any questions as we go along, feel free to interrupt or anything like that.

1040

I guess, generally, I come to this process by having a lot of experience in actually implementing employment equity policies, pay equity legislation, that type of thing. Kate will address it more from the perspective of a legal practitioner having to deal with this type of legislation.

One of the things that struck me as I was doing a bit of research on this legislation, as I went through my files from 1986 when I was working in Manitoba on the Manitoba affirmative action policy, which was not legislation and which only dealt with the public service, was that what was contained in this legislation is less rigorous than what was in that policy in 1986. It was a bit disappointing because I guess a lot has happened since 1986 in terms of equality and what we know can be done in the workplace and the advancement of law in these areas. So it's a bit discouraging to not feel that we're advancing on a policy level.

I guess the other impression I had was that there was nothing really exciting in the legislation. When we look for legislation that's going to deal with systemic discrimination and systemic problems, we like to find something that's sort of exciting and that we think actually will do a job, because there's nothing worse

from an employee perspective, from a union perspective, from an activist perspective or from an employer's perspective than legislation which creates a whole mess and doesn't accomplish anything. I hope I'm not being too critical. Buy anyway, I'll go on to some specific concerns.

I guess, first of all, what we believe is that the Employment Equity Act should serve two primary functions. The first is to educate employers and employees and those who are in the job market, sort of the citizens of Ontario, and the second function should deliver results. We have some specific suggestions which we've included in the brief to enhance the ability of the bill to deliver results, and I guess the result would be to make Ontario workplaces more representative of the communities in which they find themselves.

Before we get into those, I'd like to make a brief comment on the other function which I think is important in this type of remedial legislation, and that is the education function. First of all, we know from experience that employers won't do this type of thing voluntarily. They've had a sufficient chance to do this voluntarily. Canada's international obligations have been in force for a long time on issues of equality for women in the workplace and nothing really has happened in Canada. We've seen a few voluntary programs in some organizations but we know that employers aren't leaping on the bandwagon to do this voluntarily. So it's very nice to see legislation dealing with this.

The second point I'd like to make, in terms of my own experience in working with employers in the area of employment equity, is that employers welcome as much direction and guidelines as possible once they're required to do something. So if you've tabled this legislation with the idea that you're going to make employers do something, you might as well give them as much guidance as possible, and it's important that that be included in the act for educational reasons and for enforcement reasons.

There have been a lot of situations in other pay equity legislation in Canada where the legislation was very, very poorly drafted and introduced in a matter of weeks. In Nova Scotia, I think it took a week to draft and pass the legislation and it was very weak. The employers were as upset as the people who stood to benefit from the legislation. I'm sure all of you are familiar with those types of situations.

So the act itself needs to be much more detailed, and I think it needs to provide a checklist for employers and for unions and for interested individuals to educate them about the simple steps that are required to actually deal with the issue of employment equity.

If the act doesn't include these things, what you're going to see, from both perspectives, I guess, is chaos. You'll have a lot of employers talking about the chaotic nature of this bill, you'll see a lot of consultants coming

out to make money off the process and you'll see a lot of confusion and haphazard implementation of employment equity principles that are stated in the preamble.

There are a number of clear examples of employment equity policies and laws which provide direction to employers, and one example of that is the Police Services Act of 1993 in the regulations. It's much more detailed than what we have in Bill 79 and than what we have in even the regulations, which I'm not going to comment on at this time.

There are a lot of examples where these easy steps to pay equity implementation are provided for employers.

What I'd like to do is just briefly talk about—we have our recommendations at the back of our brief on page 21. We've got a summary of our specific recommendations. They're not all-inclusive, but they were the ones we felt were important to provide to this committee.

We looked at the preamble, which generally sets out the principles. I think it does a good job for educational purposes, as well as for some legal ones. However, we did feel it should be amended to clearly state that the object of the legislation is the elimination and redress of systemic discrimination, because one's left with the impression, as you read through the legislation, that the object is really to get good employment equity plans together. This seems to be more of a focus on the plan, rather than on the actual results of sort of removing barriers to people in the workforce.

I guess my perspective, and one that NAWL has supported, is that the act is essentially centred around two key sections, first of all, section 10 and section 11 of the bill. I do a lot of working with employers and employee groups and one of the things I say is, there are easy steps to implementing employment equity. The easy steps are: First of all, you see what's wrong, you do an audit of your workforce and your workplace and then you fix it, you take steps to fix it and everything else should fall into place. Those two easy steps—we see them appearing in sections 10 and 11 and I think we have, in the current draft of Bill 79, a good skeleton for moving this process along.

One way of strengthening section 10 would be to include standards on how to achieve barrier elimination measures, to give employers and affected people guidelines on how to do this, because there are a lot of employers who do not have really adequate human resource personnel people working with them and can't afford consultants. I think, for that reason, it's very important to spell out what we mean by looking at barriers. It's very easy; there's not a lot of debate about what barriers are, so it's not a very contentious thing to insert in the legislation, like we have in the Police Services Act in the regulations.

For example, just write down that employers should



look at the recruitment policies and employers should look at what job qualifications they're requiring for certain positions. What are the hours of work? These are all very standard, that you find in all employment equity policies, but they should be incorporated in the legislation to deal with the education function.

I guess section 11 also—the reference to positive measures: Once you have assessed what the barriers are and recommended they be eliminated, you also need to take positive measures to open up the workforce and make it more equitable in your own workplace. Again, this is a very easy amendment that could be made to include definitions of positive measures. We've given you some language here that may be appropriate: hiring policies, where you advertise, that type of thing. Those are all positive measures. There are standard employment equity procedures and there's nothing to be lost by including them in the legislation. Employers I've worked with would actually welcome having them in the legislation for that guidance.

The final point I'd like to make is: Once you have looked at what barriers exist, you've removed those barriers, you've implemented positive measures, there has to be a way of monitoring this to see that it's done, of telling people that you've done it. For that reason, in our recommendations 16, 18, 19 and 20, we deal with the posting of the equity plan. There's no reason, if the employer is required to develop a plan, why it shouldn't be posted. You're not causing any additional work by making an employer post the plan. What you're doing is providing access to a wide range of individuals who have a stake in the process, to have access to that information and to see what's being done. You want to educate employers and employees as well.

As well, the employment equity plan itself should be filed with the commission and, again, it isn't that employers will have to do more work, because they're supposed to be doing a plan anyway. It's the cost of a stamp. There's no extra work required to put it in the mail and send it to the commission and file it. It's not like they're going to have to hire millions of people to try and do this. We're concerned about those types of aspects.

I'd like to pass the microphone to Kate so she can explain some of the other concerns that NAWL has.

1050

**Ms Kate Erickson:** Maureen has talked to you a little bit about what should—in order to increase the likelihood that this act will deliver substantive rights, she's talked about beefing up, if you will, sections 10 and 11. NAWL has several other significant concerns with the way the bill is currently drafted. Let me just take you through the key areas and then I can say a little bit more and we'll then be happy to take your questions.

One of the key concerns for NAWL is that the way

the designated groups are defined in the bill means that you haven't included enough people among the members of the designated groups and you haven't been consistent with the Human Rights Code. You're eroding human rights legislation in this province with the way the definitions are drafted.

The definition of "employer" also isn't as extensive as the definition of "employer" in the Ontario Labour Relations Act. And the definition of "employer" in the Labour Relations Act, which includes related employers so that employers can't reform their businesses to avoid their obligations under the act—which is absolutely clearly established in law—goes on in this province on a regular basis. By not including a definition of "employer" that has been established over decades in law in Ontario—again, you're eroding Ontario law in an area that will be very important in terms of enforcing this legislation.

Another key concern that NAWL has is, you've exempted employers. This is an extension of human rights legislation in this province. Employment equity and pay equity legislation is an attempt to extend human rights legislation because the problem is pervasive and systemic. If your mission is to extend that legislation, you shouldn't be writing legislation. And it doesn't work to write legislation, again, that erodes human rights legislation in the province.

The Ontario Human Rights Code doesn't exempt employers. If you're an employer and you're discriminating, which is what this act is attempting to pull out, you shouldn't be exempt. Every employer in the province should be required to look at its practices and fix them so that they're no longer discriminating against members of the groups.

You've given too much time to employers. Some of the time lines in this piece of legislation are absolutely—there's no substantiation for them. You've got a requirement in this legislation that employers amend their plans every three years, yet they don't have to take a survey for nine years. How can anybody responsibly amend a plan if they can't even measure what they've accomplished over the last three years.

The other reason why it's important to resurvey is: As employees begin to understand that their work environments are changing and that they are becoming less discriminatory and that they in fact are becoming safer environments for those employees, more employees are likely to disclose information about themselves. So the next survey, if the plan is effective, will gather new information about employees who were in place three years ago.

I'm an employee in an unsafe work environment; I'm only willing to disclose a very little bit of information. Three years later, if I'm a lesbian or if I'm a person with a disability that's not visible, but I see that I'm now in a work environment that's much safer for me,

I'm quite a bit more willing to disclose. Obviously, if the aim of the legislation is to get reliable information, you want to be taking that information at much more significant intervals.

It's a significant concern to NAWL—and I've mentioned this a couple of times already. Where you're eroding, with this bill, other legislation in the province, another area that this bill, as it's currently written, is doing that is—Maureen's already talked about the Police Services Act. It's a lot more extensive. Its regulations are a lot more clear than this particular piece of legislation. NAWL believes that you should be going beyond the Police Services Act. So that's one sort of area that NAWL would like you to be looking at.

Leaving that issue aside, you're not only not going beyond legislation we've already got in this province, you're eroding it in another area. This bill is eroding the duty to accommodate under the Human Rights Code. The duty to accommodate is contained in three sections of the Human Rights Code. You've made reference in this bill to two of them. You haven't made reference to a critical section of the Human Rights Code and in so doing you've confused the issue of whether the duty to accommodate extends to all of the designated groups, to every member of the designated groups. You've covered off only a very limited area.

Those are my comments. I've sort of tried to rough this out for you and give you the general areas where we have concerns. I'm happy to go into more detail in those areas or, if you're satisfied that you've had an opportunity to review our brief and people have questions, we're happy to take your questions at this point as well.

**The Chair:** We'll take questions. There are approximately three minutes per caucus. I would remind you the three minutes go by very quickly. It means one long question or two short ones. We'll begin with the third party.

**Mrs Witmer:** Thank you very much for your presentation. I'll be very brief because I know Mr Carr has a question as well. You mentioned the preamble here and the need for change. Are you suggesting, then, that some of the preamble as presently written would be removed and replaced by what you've proposed here?

**Ms Erickson:** The only thing in the preamble that we feel it's important to remove is, in the first full paragraph of the preamble you've got the words that the people in the designated groups experience more discrimination than others. It's NAWL's position that the suggestion is everybody in the world experiences discrimination and we don't believe that. We disagree with that position.

What would be important to NAWL, in terms of taking out anything in the preamble, would be to take out the word "more" and then the words "than other

people," so you'd leave in the word "discrimination." It would be important to take those words out because they're unclear and they're untrue. Because you've left out gays and lesbians as a group in this legislation, which is part of how you've undermined the Human Rights Code, it may not even be true. It may not be true that members of these four designated groups experience more discrimination than gays and lesbians. Who can measure that?

**Mrs Witmer:** That's right.

**Ms Erickson:** So that's problematic. However, what our brief attempts to do is to ask this committee that you strengthen the preamble in terms of—you've got some very strong language in the preamble, which is extremely important and it's good language. You've made it absolutely clear in the preamble that this act is designed to extend human rights legislation in the province. That's really important. You've included all people in the preamble. If you extend sections 10 and 11 and strengthen those, and if you extend the definitions of "designated groups," consistent with the words "all people" in the preamble, you'll strengthen this bill considerably. Our brief is intended to take the position that the preamble needs to be strengthened, so you can leave much of what's in it. There's some strong language in the preamble, but the preamble needs to be strengthened.

**Ms Jenny Carter (Peterborough):** Thank you for your very solid and thoughtful and constructive suggestions here.

You mention that one of the main objectives of this bill should be to educate everybody concerned. I'm just looking at section 41 of the act and that does seem to me to fairly clearly state that is a function of the Employment Equity Commission, both to help employers, employees and bargaining agents to comply and to educate the public. I think that is seen really as one of the prime things the commission will do. Does that not cover your fears there?

1100

**Ms Kilgour:** I guess one of the concerns is that when people are sitting down with us, an employer, a union, an individual, trying to implement this legislation, what you carry around with you is the legislation itself and you always look to the legislation for guidance. It's nice to have the Ontario Pay Equity Commission put out binders and binders of material and videos and have people come and talk, and that's fine, but when it comes right down to implementing, what you carry around with you, usually enlarged so you can read it properly, is a copy of the legislation.

So the education that the commission will be doing will probably be addressing special-interest groups or Rotary club luncheons or meeting with employers and doing videos, how to easily implement this and tips and guidance, but the fundamental of educating is actually



carrying this around and having it clearly spelled out in the legislation what you have to do.

I like the role of the commission in educating, but I think what you actually have to do should be also included in there.

**Ms Carter:** Okay. I just quickly wanted to raise also the question of how to include gays and lesbians. It has been suggested that there's a problem with numerical goals there because the statistics aren't there, and also they might not be willing to self-identify for various reasons. Do you feel that there would be some way of including them in a less specific way and, if so, could you elaborate on that?

**Ms Kilgour:** We have one recommendation, I guess, for dealing with CIS issues, saying that in a separate section there should be a recognition that gay men and lesbians are a group which has been historically discriminated against.

Part of addressing the concern about self-identification is breaking the legislation down where an employer is required to look at barriers and take positive steps to make the workplace a more hospitable one for gays and lesbians, and maybe in 10 years the workplaces of Ontario will be so gay- and lesbian-friendly that people won't mind self-identifying and we can actually get some numbers on it.

But I think you can break down the legislation to say: "Look, we know there are gays and lesbians out there, we know they're in our workplaces. Let's look at what are possible barriers. Let's implement anti-harassment policies, anti-discrimination policies etc." So taking that step, let's undertake positive action for educating the people in our workplace and then the self-identification becomes a moot point, I think. So you can undertake those types of steps.

**Ms Erickson:** I agree with that. I think also one of the things that is important certainly to gay men and lesbians and probably to many other people who are members of the designated groups is, people will disclose if they can limit their risk in disclosing. So if these questionnaires were going to be confidential, which your bill does not provide for, but if the questionnaires could be confidential, if people didn't have to put their names on them, they might be quite a lot more willing to self-disclose if the risk was minimized to them.

If the questionnaires won't be confidential, NAWL has a concern that what you will run into is a conflict with the Human Rights Code, because under the Human Rights Code in this province employers can't ask questions like whether you have a physical disability or what your country of origin is. If the act makes disclosure confidential, you'll eliminate one of the significant problems of gay men and lesbians and one of the reasons why they wish only very limited participation.

**The Chair:** Thank you.

**Ms Carter:** I have a question—

**The Chair:** I'm sorry, no, we went way over time. Mrs Carter, sorry, we went way over time. Mr Callahan.

**Mr Robert V. Callahan (Brampton South):** I want to take a look at the issue of what you had said about the Human Rights Code. By bringing in this legislation and drawing only a few people out of it, you have in fact weakened protection under the human rights—

**Ms Erickson:** No.

**Mr Callahan:** —legislation. That's the way I read it.

**Ms Erickson:** Okay. You have a Human Rights Code that includes—are we talking about gay men and lesbians at this point?

**Mr Callahan:** Well, I actually want to take it one step further. Maybe I should make that clear. In my constituency I often get calls, as I'm sure many of our members do, from older men who have lost their jobs because the company has disappeared and gone south of the border or just folded up. They go out and they try to get another job and they're told, "No, we can't give you a job." They sometimes say they're overqualified, but more often than not what they're saying to them is, "We don't want you in here at this stage because we've got a pension plan which we don't want to put you into," and so on.

They have rights under the Human Rights Code because they can't be discriminated against on the basis of age, but by being excluded from employment equity, they in fact have no rights under that legislation so they're required to bring their case under the human rights legislation per se, and that doesn't necessarily get them their jobs back. All it does is perhaps get them a remedy under the Human Rights Code.

What concerns me is that by not including them—and perhaps gays and lesbians as well is another area—you leave them to the remedies under the Human Rights Code, which may not be the appropriate remedy for them in terms of being employable.

I'd like you to comment on that.

**Ms Kilgour:** I suppose our position would be, you have to look at whether—so your question is, do we have a position on whether elderly people or age discrimination should be included?

**Mr Callahan:** Yes.

**Ms Kilgour:** You would have to look at whether older people, and what would the age be, are discriminated against systemically. Are people over—pick an age, whatever age you're particularly concerned about, historically excluded from employment? And you have to make choices, as you've recognized.

In our opinion, at least the four designated groups that have been singled out for this legislation, and in

our opinion gay men and lesbians should be included as the fifth designated group, those designated groups capture the significant majority of people in this province who have been pervasively and historically discriminated against.

There certainly is discrimination on the basis of age, but these designated groups are singled out on the basis of stereotype and require protection.

If you want to extend this legislation to other groups, and you've got statistical bases for doing so, catching more areas where people are historically discriminated against is a good thing. I've never heard, actually, that that has ever been seriously considered.

I think at this point, you've got legislation. If it needs to be further developed once it's been put in place, who would resist that? That would be a good thing as well, but don't hold this legislation up and begin an investigation from ground zero about whether other groups—

**The Chair:** Thank you. We have gone over our time limit, and I want to thank you. You've made a very important contribution to these discussions. Thanks for taking the time.

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair:** The next deputation is the Association of Municipalities of Ontario. I want to welcome all of you to these discussions. I think all three of you are very aware of the process. Leave as much time as you can for questions and answers and please begin any time you're ready.

**Ms Helen Cooper:** My name is Helen Cooper. I'm currently the mayor of Kingston and I'm a past president of the Association of Municipalities of Ontario. With me today are people who have considerable expertise in the practice of employment equity: Mary Dauphinee, the director of the equal opportunity division of the city of Toronto; Paul Scott, the director of human resource development and employment equity for Metro Toronto; and Charlotte MacFarlane, who's a policy analyst with the Association of Municipalities of Ontario. Charlotte, why don't you join us?

I'll very quickly go over the brief with you and I appreciate that the questions are the interesting part, so I'll try as best I can to leave time for that.

The Association of Municipalities of Ontario in 1989 indicated support for the principle of employment equity. Since that time several association committees have worked to follow the issue in its various stages. Most recently AMO has been actively involved through a representative to the Minister of Citizenship's employment equity advisory task force and a representative to the regulations development committee, and I trust by the quality and the commitment of the people who have worked in this exercise that we have truly demonstrated our interest and involvement as an association.

In a 1992 letter to the Employment Equity Commissioner, AMO set out areas of particular concern. AMO recommended that goals and timetables for hiring and promotion of designated groups not be legislated by provincial standards. AMO also indicated that regional disparities in population composition should be considered when goals are established. We asked that small employers be required to conduct only an employment systems review. We indicated that equality was a right and should not be bargained. AMO expressed concern about the potential repercussions of data collection, which is something I think we would like very much to talk about this morning. Finally, we asked that implementation schedules be based on population, not sector.

First of all, I'll report the good news. In this regard, we will not accuse government of not being responsive, because in the drafting of the bill the government has been responsive. While goals and timetables are required, some flexibility has been built into the application. The government appears to have given consideration to the differing populations in the various parts of the province. Broader public sector employers with fewer than 10 staff are not subject to the legislation and those with 10 to 49 employees are subject to modified requirements. While we have been concerned that employers and employee groups would have to negotiate about equality rights, section 14 of the bill requires that employment equity be negotiated separately from the normal collective bargaining process and stresses that responsibilities be shared between the employer and any bargaining agents.

We have continued concerns, however, about the interface of the proposed legislation with the Municipal Freedom of Information and Protection of Privacy Act. Unfortunately, the government chose—in this case, as you can see, we're not entirely satisfied—to make a distinction between the private, public and broader public sector employee groups for application of implementation schedules, instead of using the criteria of size.

We want to ensure that if the government proceeds with passage of Bill 79, the legislation and its regulations can be operationalized. Recognizing that there is considerable resistance to this legislation, as there is with anything that requires attitudinal shifts, the process must be effective and uncomplicated.

We state that they were not intended to diminish the importance of this piece of legislation but simply to highlight the fact that the cumulative impact demands simplicity of implementation and maintenance. I speak for an association that has a membership of approximately 650, but there are over 800 municipalities in the province of Ontario, with electoral rolls close to a million or electoral rolls literally in the hundreds.

The legislation and the draft regulations are comprehensive yet contain little flexibility. There should be a section that allows employers to negotiate with the



commission on their progress towards meeting the intent of the legislation but which does not result in contravention of the legislation or automatic referral to the tribunal. The process for implementation should be made as easy and user-friendly as possible. Because of the significant constraints all employers face, the legislation should facilitate the best use of limited resources, and I say this particularly and emphasize it very strongly in the context of what municipalities have faced in the past four months. Conditions have changed dramatically, and I will refer to it again a bit later in terms of the expenditure control plan, the social contract.

In the milieu in which I work, most councils are consumed at the moment with how to reduce their workforce. I would say, in terms of labour relations, that's the number one topic of discussion at the moment. In the case of municipalities under 100,000, I would predict a huge number of councils have adopted policies whereby council has to review every individual hiring and it has to be justified to that council. The intent is not to review for the purposes of employment equity but to determine whether the position is required or needed in the first place.

So, therefore, in that kind of milieu, implementation of this legislation in a way that is seen to be confrontational I predict will not be particularly workable, and I doubt that the province has the capacity, either to be able to enforce in a very offensive manner.

Education is of paramount importance. I believe other groups coming before me this morning have talked about that as well, so I won't dwell on it. But subsection 8(3) of the police services employment equity plans regulations should be emulated. That section refers to educational training for employees on race relations, diversity and human rights. In my experience in my own municipality, the implementation of employment equity for the plans for the police services has worked extremely well.

The commissioner's office is encouraged to be prepared to provide a high level of technical assistance to employers to ease their compliance with the proposed legislation. Because the process is complaint-driven, sufficient financial resources should also be allocated to finance adequate numbers of review officers to expedite investigative procedures.

There is a sense among some municipal administrators that the commission is abdicating some of its more difficult responsibilities, leaving employers to fight the hard fight. Employers are not given enough direction on the more sensitive issues. The regulations are only clear on such soft issues as flex work hours, which many of us have already, but they are not clear on the more sensitive issues such as positive measures, seniority and goals.

Regarding the question of seniority, and that's one we

particularly wish to point out, Bill 79 is inconclusive and the regulation evades the question altogether. The regulation and the legislation must make specific reference to seniority as part of the systems review.

We do have a problem with some of the definitions. I don't think I'll go into that, because that's relatively technical and not as politically interesting as some of the other points we're making, and certainly those issues are there for you to review.

We would, however, like to talk about the issue of the workforce survey, and I bow to my colleagues in that regard, who can certainly give you more information. The inclusion of voluntary self-identification will inevitably lead to inaccurate counts of designated group members. This is stated from experience. As the bill currently stands, employers cannot verify results, leaving the process open to manipulation. AMO recommends reinstating supervisory identification or introducing mandatory self-identification as an approved method of data collection for employment equity purposes.

We do, however, as I pointed out early, wish to address that. For municipalities as employers, there is this act called the Municipal Freedom of Information and Protection of Privacy Act, and we ask that you ensure that this bill is compatible with that existing act.

In terms of employment systems review, we recommend that employers be permitted to have a plan to do a systems review within the next 18 months, but not to have to do the review itself in that period. At the expense of sounding extremely repetitive, employers, particularly in smaller municipalities, are under a great deal of strain at the moment because of the events of the last four months. I think this is an entirely reasonable request, particularly under those circumstances.

Now we'd like to talk about employee participation. We think that's extremely important. There is in the bill reference to joint responsibility but not to joint accountability. The commission should issue guidelines on the selection or election of non-unionized or excluded employees to participate.

I did get here a few minutes early this morning and listened to the coalition presentation. I think the point they were making is one I'm reiterating: There are non-unionized employee groups, and they should be represented in this, and they should be represented by their own duly elected people. We wish to strongly emphasize that point.

While we were pleased to see that, unlike the bill, the regulations acknowledge the importance of equal representation for employers and bargaining agents on joint committees, we want to convey that it is imperative that this change be reflected in the bill itself.

I'm sure you can read the conclusion for yourself as well, so at this point I would simply like to thank you for listening to us this morning and invite any questions,

though I won't necessarily be the one to answer them. Thank you.

**The Chair:** Five minutes per caucus. Government members will begin.

**Mr Mills:** Thank you, Helen and other people here this morning. In your presentation here, page 7, "Employment Equity Plan," I know you said this is not exciting to talk about, but you've said that there needs to be a definition of what is meant by the term "reasonable." We've had a number of people come here before this committee and either it is that "reasonable" is unacceptable, they want stronger language or—so my question to you, although you sort of indicated that you didn't really like to get into the technicalities of it: How can you help us define then that word "reasonable"? What are your ideas?

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**Ms Helen Cooper:** I'm quite happy to get into technicalities. I just thought it was kind of boring to read them, that's all. You're quite able to do that for yourselves.

**Mr Mills:** Okay.

**Ms Helen Cooper:** I suppose "reasonable" is a totally subjective interpretation. What I deem is reasonable is not necessarily what somebody else deems is reasonable. Who would like to respond further?

**Mr Mills:** I'm looking for some sort of recommendation, if you can give it to me.

**Mr Paul Scott:** Tell me if I'm right off the mark, but what I believe this refers to, Charlotte, is reasonable as it relates to reasonable accommodation.

**Mr Mills:** Yes.

**Mr Scott:** My sense, as a practitioner for years and my running a human rights program in Metro as well, is that the definition in the Human Rights Code of "accommodation," short of undue hardship, provides clear guidance on what accommodation is required. The word "reasonable" introduces a subjectivity which we don't find at all acceptable. So "undue hardship" is defined in terms of cost, in terms of service to the public, and in terms of what you can really expect from a staff and what you can expect from a municipality in terms of funding staff, is a much better definition.

So I prefer, as a human rights practitioner, not to have the word "reasonable" anywhere in our lexicon.

**Mr Mills:** Anywhere. Okay, right.

**Ms Carter:** You have suggested a very active role for the commission in providing assistance to employers and in other ways. Now, some people have suggested that it would be an extravagance, if you like, on the part of government to have a separate commission for employment equity, given that we have other related commissions in place. Do you think it would be a waste to have a separate Employment Equity Commission?

**Ms Mary Dauphinee:** Certainly, with the number of tribunals that are being set up, there is a process that we think would work just as well as a separate tribunal, which is through the Human Rights Commission. The Human Rights Commission is there. I have some concerns that the act takes away from the Human Rights role. The Employment Equity Commission I see as doing the audits, and the complaint process and the adjudication I feel should be with the Human Rights Commission.

**Ms Carter:** Okay, and just one other point: You are advocating mandatory self-identification. I'm just wondering how that would work. Would you bring sanctions against people? How would you know against whom to bring them? How would you define very clearly those people who did need to self-identify? And this brings us to the question, for example, of racial minority and what subgroups are to be included in that, who in fact would have to self-identify as a racial minority. Could you comment on how workable that would be and how you would do it?

**Ms Helen Cooper:** Yes, we've had quite a discussion among ourselves about this, but Paul—

**Mr Scott:** I think that within personnel systems there are a number of forms of documentation that are mandatory. It's necessary, you know, to do certain kinds of documentation in order to have a person work for you. You get their social insurance number; you get a number of other things. I think that mandating a confidential self-identification is quite conceivable. The person, presumably, could have the option of not identifying, but at least we would know that was the option they'd chosen.

I think many of my colleagues would prefer that you had the combination of supervisory identification and self-identification so that even those who don't identify would end up in some category. At the federal level, you get the bizarre situation of employers spending \$80,000 to \$100,000 on accommodation for a disabled person and then discovering that there's no such person identified within that workplace, and it's frustrating for employers.

I totally respect the concern that the employees have about our misusing that information, and we probably deserve the fear and paranoia that exists. I hope we can earn better trust.

The other thing I'd like about the freedom of information and privacy is that right now I have a situation where my freedom of information coordinator is telling us we don't have that 80% response rate, a high enough response rate to do an accurate goal-setting according to the regulations of the freedom of information legislation. I used three full-time staff maintaining an 80% response rate, going back all the time, asking over and over again, and in today's economic environment it's very difficult to justify that kind of employee outlay for



what is strictly a compliance exercise as opposed to a proactive programming exercise. That's why I feel strongly about this.

**The Chair:** Thank you. I'm sorry, we've run out of time. Mr Murphy.

**Ms Helen Cooper:** I'm sorry to interrupt. Could I very briefly respond to member Carter's question as well as the municipal politician? It's not just the issue of how many commissions there are. It's the issue of how these bodies in this kind of issue conduct themselves. As a municipal politician, one has frequently dealt with provincial regulatory bodies that presume guilt and we are required to prove innocence. I would suggest that what we're trying to say here as much as anything else is that it's extremely important how the commission conducts its business as well as whether it's big or little, and that if it is not the threat that so frequently provincial bodies have been in the past, it's more likely to get further faster.

**The Chair:** Thank you. Mr Murphy.

**Mr Tim Murphy (St George-St David):** Thank you very much for your presentation, and I appreciate it. One of the things we've heard quite a bit about is the definition of "employer." You've referred to it as part of the technical part and I did want to follow up on it. Obviously, in the municipal sector it has a different application and there is some further definition within the regulations.

The question I have is, in an area where it is a small municipality but it's covered by the act, so there are more than 10 employees, I could see it having some real problems in terms of what the comparative community is for the purposes of employment equity. I'm wondering if your organization has looked at that issue at all in terms of how it works in the municipal sector.

**Ms Helen Cooper:** I can certainly recall our experiences under pay equity, which isn't answering your question, but I will get somebody who will. Municipalities are rather diverse in terms of employment. For instance, pay equity—we got hung up on whether police were municipal police employees or not. There were contradictory definitions in the legislation in that regard. Homes for the aged, depending on the jurisdiction, went back and forth as to who was to be compared to which group as to the circumstances. In other words, it's a very diverse employer, and the legislation simply did not adequately address those problems and in some cases contradicted itself. If there's more to be said about that in terms of what you're asking, I would have to bow to another member of the group.

**Ms Dauphinee:** I think it's just to have the clarity in the act so that we're very clear about what the definition is. That's what we're asking, that it be detailed.

**Mr Murphy:** All right. If I can follow up on that,

one of the other concerns that we've heard about is the way in which the joint committee, at least for the unionized part of the workforce, is going to be set up. What you'll end up with is some employer saying, "Look, we have diversified workforces where parts of it do entirely different things," and it's following up on your point, your worship, the question of homes for the aged, police and other things, and they're all sitting at the same table devising the employment equity, the plan. In theory, the police service union could be sitting in judgement on the employment equity plan for the homes for the aged group, and I'm wondering if you've thought about that issue as well.

**Ms Dauphinee:** The police have their own employment equity plan.

**Mr Murphy:** Yes. The police obviously is separate in this case.

**Ms Dauphinee:** Certainly, having people around the table is a positive thing for us. There has been some problem in the past of including everybody. Our concern is that not everybody is there under the act. We think that the non-unionized employees are the ones we have concerns about and should be at the table.

**Mr Murphy:** Absolutely. I think my colleague has a question.

**The Chair:** It will have to be quick.

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**Mr Curling:** It's good to see you, mayor. My question is of the same nature: those who are non-union and are not around the table, their representation. Who do you think should formulate that group? You said a joint committee, you mentioned it here, and they are union people and the employers. The non-union people, the last presentation stated, should select their own people to bring to the table. They think it's extremely important that this happen. The government legislation or regulation stated "consultation," and that is not defined. I see you're quite concerned about defining terms. It said they will be consulted. Do you think it is very important that they are at the table?

**Ms Helen Cooper:** Definitely. This raises another issue for me that I neglected to mention because I was trying to go too quickly: The issue of temporary or seasonal employees is another extremely important issue for us. There's a great deal of work in municipalities that is seasonal in nature, as you can well understand. Very often it's seasonal which requires certain skill levels. I, for instance, would not attempt to drive a snowplow without being adequately instructed beforehand, but that's an obvious seasonal job.

If there are not employment equity considerations for seasonal employment, that is very systemic in terms of ongoing discriminatory practices. Obviously, if I learn on a seasonal basis to drive a snowplow and a full-time regular employment opportunity arises which requires

that skill among other things, I will then be more likely to be hired for that job than somebody else. Therefore, it's extremely important in municipalities that temporary and seasonal positions be scrutinized under the terms of employment equity as well. Otherwise, particularly in public works departments and parks and recreation, we will have a long way to go for a long time.

**Mr Gary Carr (Oakville South):** Thank you, Helen. You've been in many committees over the last little while, particularly when you're president of AMO. We appreciate that.

I wanted to ask you a question along these lines: You talked about the seniority issue, and I think the word you used was "evasive." I believe one of the reasons it's evasive is so that they can say to both sides, depending on whether they support that issue, "Yes, it should be included," and to the other people who don't like it they say, "No, it should not." What's your feeling? Why did they leave it, as you say, so evasive?

**Ms Helen Cooper:** I don't know. I can't answer that question because I didn't write the bill. All I can do is repeat myself. Particularly at the moment, when we're looking at early retirement packages, everything we can possibly look at to avoid layoffs in our systems, a seniority clause is very obviously a barrier to introduction of new employees into the work environment. If employment opportunities were expanding, it would not be an issue. I don't know if somebody else wants to tackle this.

**Mr Carr:** I think you're right. With people I talk to, it's true that the big concern is just having a job. I think you mentioned particularly in the municipalities what's happened.

I appreciate that you made some very good recommendations in here. Assuming now that there are no changes, will AMO still support the bill if it stays as it is right now?

**Ms Helen Cooper:** First of all, it's difficult for me to speak for an organization as diverse as the association.

**Mr Carr:** You're on the hot seat now, though. They're tough enough to speak for any time.

**Ms Helen Cooper:** I've just come from the convention; I don't know how many I won at the convention. But I'd go right back to the beginning of the presentation. We support the principles of employment equity I think in the same way we supported the principles of pay equity. I think the record of municipalities in the implementation of pay equity is highly commendable. I think we did a great job. I think that if we say we support something, then we—

**Mr Carr:** So you'd have to support the bill as it is? A lot of people have talked about the principle, but it's this bill we're going to be judged on. If it stays as is, AMO still—

**Ms Helen Cooper:** What we're trying to do here is point out to you that the bill as written is going to give some of us some really serious problems, but I still think there's a firm and strong belief in employment equity. That's the goodwill that underlies, and I'm sure that's true across partisan areas in the province as well. But we'll have some problems: You may find that certain municipalities simply are in a position where they can't come to terms with the bill because of their circumstances. It's not ill will.

**Mr Carr:** Would they be the smaller municipalities, principally?

**Ms Helen Cooper:** I talked earlier about there being over 800 municipalities. A significant number of those 800 have fewer than 10 employees, so the ones that would have had the biggest problems with this are now not subject to the legislation.

**Mr Carr:** Thank you. Good luck.

**The Chair:** I want to thank the delegation for coming, for your presentation and for participating in these hearings.

**Ms Helen Cooper:** Thank you very much.  
WORKING SKILLS CENTRE

**The Chair:** Working Skills Centre: Welcome, Ms Chu and Ms Suryo-Atmojo. You have a half-hour for your presentation. You've seen the process in terms of allowing questions from the members to you; please leave as much time as you can for that.

**Ms Liana Suryo-Atmojo:** My name is Liana Suryo-Atmojo. I'm the language training director of Working Skills Centre.

**Ms Christina Chu:** And I'm Christina Chu, the placement officer at Working Skills Centre.

**Ms Suryo-Atmojo:** We wish to thank those who have brought this legislation forward and this committee for the opportunity to present our point of view on the act.

The Working Skills Centre has been a job skills and language training centre for immigrant women for over 15 years. Our main goal is to assist in breaking down the barriers blocking these women from finding appropriate employment. Over 600 women from more than 50 countries of origin have graduated from Working Skills Centre training programs and over 80% have successfully gone on to further training or have found jobs. Working Skills Centre also provided employment and training referrals to thousands of immigrant women through our counselling, referral and intake programs.

WSC believes that employment equity considerations should be taken into account during all stages of hiring and promotions. Job advertisements should specifically encourage equity groups to apply and advertising special outreach should be done in appropriate places so as to produce an ample pool of appropriate candidates; interview questions should be reviewed for bias; and



hiring committees should reflect target groups being targeted.

I would like to present our experiences now. We want to share with you a number of our experiences which will show you how this legislation and changes we propose to it will best help the population we serve.

Our experience with the federal employment equity legislation of 1986: After this legislation was enacted there was a noticeable increase in the quantity of job postings made available to WSC from major companies in the private sector. These job postings specified interest in hiring from the equity target groups. There was also an increase in the number of telephone inquiries made to Working Skills Centre by firms seeking job-ready target group applicants. From the public sector the change was even more visible, as there were special procedures for hiring people from various target groups.

While not labelled as an employment equity program, the mandatory hiring of francophones in the federal public service has been very successful in a relatively short period of time. We now see francophone men and women at every level of the hierarchy in the federal public service.

This new provincial legislation will broaden the scope of private sector companies being regulated and influenced to change their approach to hiring and promotion. This legislation will also bring this policy to the broader public sector, and such changes will dramatically affect the number of job opportunities for the population served by Working Skills Centre. This experience clearly identifies the fact that systemic change comes through legislation.

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**Ms Chu:** As a placement officer, I would also like to share some of our experiences with you. Before I do that, I just want the members here to know that one of our presenters, Adar Mohamoud, had a car accident this morning, so she may or may not be able to come in today. We hope she may be able to join us.

Some of the experiences of myself as a placement officer, of my predecessor who was also doing placement for the microcomputer training program and my predecessor who was doing the placement of the mailroom trainees, as you can see, show very clearly that there is systemic racism in the workplace.

For example, one employer told us they wanted a Vietnamese person because they have nimble fingers. Another example is that a personnel officer said, "My boss really admires those who are from eastern European countries," a hint that it would be appropriate for us to send someone from those countries.

Another situation was that our placement officer was referring an immigrant woman to this particular company and the person said, "We want a Canadian." Then

our officer said, "This particular person is a Canadian; she is a Canadian citizen." The reply was, "Well, we want a real Canadian."

**Mr Mills:** I'm not a real one.

**Ms Chu:** Another employer was speaking with the placement officer. After giving the full name of the person, the employer said, "No, I don't think we can interview that person." And there are other experiences. We can't really put our finger on it, but the experiences of our trainees are that they see an ad in the morning, at 9 o'clock they call, at 9:30 they get through. As soon as she spoke, "I'm applying for the job in the ad in the Star," she was told that the position was filled.

My sister was a receptionist one summer and her experience was that her boss instructed her that as soon as she heard someone who has an accent, turn them down, tell them the position is filled.

Again and again, there are common things told to us by the trainees, that if there are people of a certain ethnic origin who are already in a particular work site, who are from their same country of origin, they will feel, "Hey, I may have a chance there." But if not, their experiences and their perception is that they will not have a chance.

Because of those experiences, it is really important for us to implement a very good law, a very strong law. I have to say that in today's climate I applaud the government for bringing forth this bill.

In our brief we have suggested that in collecting the information about the designated groups, it is also important to collect information on the subgroups, precisely because of the experiences we had mentioned earlier. A particular employer would say, "We want people from a certain group. We know the Chinese are more hardworking," or whoever has the nimble fingers. We hope to add that into your legislation or regulation.

There's another thing I also notice, which is that a lot of the firms are saying, "We have a specific image to present to our customers and, as a result, we want a certain type of looks." By so doing, for example, when I said to one employer that this particular woman from an East African country wears a scarf—in fact Adar, who couldn't come today, wears a headscarf—then it was told to her, and it was also our experience, that the employer feels that is not really the image of the company, that will not present well for them.

Things like that, you can't really use the Human Rights Code to come back because that will take ages. That's why the bill here, as we can see it, is more proactive and allows this kind of systemic racism to be removed from the workplace. I know that the Alliance for Employment Equity has been here earlier and that we have seen their position and we like their position. Here we'd like to endorse their recommendations for the committee.

**Ms Suryo-Atmojo:** I would just like to close with a couple of comments. An Employment Equity Act with mandatory requirements and specific goals and timetables is long overdue. The implementation of such an essential program should not be delayed, we feel, even during a time of major economic downturn, as its effects are not just geared for the short term but very much for the long term.

We wish to firmly state that dismissing an incompetent employee is always appropriate, whether from a target group or not. Employment equity should simply mean giving individuals from target groups a chance to prove themselves. We are promoting access and opportunity, and it can and should be implemented through the selection of qualified, capable target group members. Anything less than applying minimum qualification standards can only serve to undermine the purpose and the effect of the policy.

Although the American model is widely regarded as flawed in many aspects, it cannot be emphasized enough that the American example has shown that employment equity benefits corporate employers as well as qualified individuals of the target groups.

The implementation of affirmative action in the US brought real opportunities to members of target groups. When President Ronald Reagan's administration proceeded to dismantle affirmative action legislation, it met with resistance from large corporations such as AT&T, Levi Strauss and Kellogg's, whose experiences brought them to the conclusion that affirmative action was good human resource planning and management. Even those who were not in the target groups, the able-bodied white males, seemed to like it, as hiring and promotion acquired more consistency. Instead of hiring done on the basis of who belonged to the same country club as someone else, hiring and promotions became based on real skills and abilities.

In conclusion, Working Skills Centre highly commends the government for finally bringing forward this type of legislation and trusts that the recommended changes will be incorporated.

**The Chair:** Thank you. Mr Curling, four minutes.

**Mr Curling:** Thank you very much, Mr Chairman. I want to thank you for your presentation. It is one of the few presentations that brought the live situation right into the committee here on knowing how do we put legislation in place that will address those issues, and you rightly say that. There are certain things that legislation will never address, but maybe education and gradually people who are conscious of some of the systemic discrimination or other types of discrimination that are in the workplace before we can eliminate that.

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There was a presenter here earlier on who stated that a weak bill will not only fail to advance equality rights

in the province but will actually undermine some of the important legal principles which were developed over time and sometimes for years. We have brought some consciousness to people that you cannot discriminate in the workplace or anywhere else, for housing or what have you.

The concern that I have and some of the groups have had is that having a legislation that is not properly defined allows employers or allows others, even agencies, to perpetuate—I'm talking about employment agencies—those discriminatory practices. Do you find it is extremely important for us to have a very strong, defined legislation more than a weak legislation?

**Ms Chu:** First of all, yes, there are many things that need to be changed in this bill, but I think—I agree totally with the black professional group that made the presentation yesterday that it is still a ground-breaking bill. We need to make improvement, there's no question about it. For example, some of the things in the regulation right now should be in the legislation. But on the other hand, we have been waiting for a long time for this bill and then we would hate to see, because this is in some way not to the absolute perfectness, that it be removed from the process.

**Mr Curling:** My other question to you, and it seems to me your organization has been dealing with immigrants who are in dire need of—correct me if I'm wrong—certain groups who need English-as-a-second-language support. Employment equity cannot in its own self, just as some people have presented it, seem to be isolated in one area, but you need a lot of supported areas in which to bring an effective employment equity program. Do you see the government itself putting behind it money in order to get these programs going, not cutting back, as we see them? Quite a few of these programs, English-as-a-second-language programs, have been cut back. I have a tremendous problem in my constituency of people coming back and saying they're losing this money, they can't keep up with that support in supporting English-as-a-second-language program. Are you finding that in your community too?

**Ms Suryo-Atmojo:** If employment equity is seen as long-term human resource planning and management, I can see that putting money in English-as-a-second-language programs, even in a recession like this, would really pay off very much in the long term. So this is generally our position, that yes, we have a recession going on and it's difficult for everybody economically, but putting money in ESL programs in the long term will pay off economically.

**Ms Chu:** You are right that our experience is that some of the federal government's program has been removed from the—the money there has been diverted somewhere else. It is true; that's our experience as well.

**Mr Carr:** Thank you very much for your presentation. On page 4 you talk about the situation where a



personnel officer called up and asked for somebody from eastern Europe, and I think almost everybody on this committee would say that would be terrible. But I was wondering if you could explain the difference between somebody calling up and saying, "I want somebody from eastern Europe" and the government saying to a company, "You will hire somebody based on being one of the four categories: a woman, a minority, a native or disabled."

Could you explain to me what the difference is between saying to people who call up, "I want somebody from eastern Europe" and classifying that way, and can you see how some people say what you're really doing is classifying, just changing classifications based on past discrimination? Could you explain the difference to me?

**Ms Chu:** I'm not too clear about your question. You're saying that—

**Mr Carr:** Maybe it was my fault; it probably wasn't clear. You've got somebody calling up, saying to you, "I want somebody from eastern Europe." You said you've got some people who call up and say, "I want Chinese because they're hardworking," and so on. That is discrimination based on their origin.

What the government is saying in this bill is that you will hire and you will promote a certain percentage based on being from the four categories: a woman, a native, disabled and minority. There are some people who are saying what the government is doing with this bill is the same as what the people are doing when they call you up to say, "I want somebody from eastern Europe"; that really it is a form of discrimination, and we'll use the words "reverse discrimination," based on no other reason than past discrimination against these four groups.

How do you handle it when they say, "Oh, what you're doing is the same thing, only helping these four groups" and that really what you're doing is reverse discrimination?

**Ms Chu:** First of all, I think that study after study has said that these four designated groups have been discriminated against severely in the past.

**Mr Carr:** Everybody agrees with that; everybody agrees.

**Ms Chu:** Okay. That's one reason why the bill is necessary and why those four categories are necessary. I think what we want to see, and I think the bill to a large extent addresses this, is that the workforce or the workplace in a particular locality reflects the population. Let's say the company calls me and says, "We want people from a certain ethnic origin," and the reason is because of their ethnic origin. That is very clearly discrimination.

**Mr Carr:** What we're doing is now—

**Ms Chu:** Hold on.

**Mr Carr:** Sorry, I don't want to interrupt.

**Ms Chu:** Now, if the company is calling us and saying, "Okay, I want one of the equity target groups," because they have been discriminated in the past, then that is different.

**Mr Carr:** How is it different?

**Ms Chu:** They are precisely not looking at the skills, not looking at the qualities of the person. They're looking at something that they cannot control. I am born in a certain country; I happen to have a certain skin colour. I think you understand what I mean.

**Mr Carr:** What people are saying is it works the other way. If there's a job opening—and of course my group has been one of the ones that have been at advantage, white male—a lot of them are saying you're now picking from these groups, the same thing is happening.

But I did want to go on to another question. We'll leave that because I know that's the crux of the whole issue, and it's a tough one to answer. On page 1 you talk about job advertisements. In my area, Halton, we had a problem. I won't name the group because they apologized. What happened was the executive director of an organization that gets government funding put an ad in the paper requesting somebody. I think it was lesbians; it was right in the advertisement. As it turned out, the executive director didn't know. Somebody down low put it in. It raised tremendous controversy in my area.

In this whole issue, don't you see that there's going to be a real problem, and let me use the word "backlash," if we are putting advertisements in saying this is the one group that we want and identifying them, whatever that group may be? Presumably it's the four categories. Don't you see a tremendous backlash in the public if we put ads in for a particular company saying, "These are the qualifications and this is the person by category that we want"?

**Ms Zanana L. Akande (St Andrew-St Patrick):** Who's going to do that?

**Mr Carr:** They said they should, the job advertisements should be encouraged, page 1.

**Ms Chu:** About the target groups, right?

**Mr Carr:** Yes. Page 1. That's what you said you'd like to see.

**Ms Chu:** I believe Mr Williams from the National Grocers yesterday made a very good point, that one of the first steps in the implementation of this bill should be education, educating his own workforce, and to extend that to the larger society in Ontario. We should also educate the population why we have this bill.

I can't speak to that particular incident because I don't know the context but, to my way of thinking, as soon as people understand why such a bill is necessary,

there will be a lot of—I think a lot of businesses are saying, “Hey, this makes business sense,” and then for the employees to understand, “Hey, in the long run, we will benefit as well.”

1200

**Ms Suryo-Atmojo:** May I just respond very quickly to this also? About your mentioning that members of the target groups are encouraged to apply, it may have a backlash but it may not either, because some members of the general public have been educated. Another thing also is that without this little insertion, “Members of the four targeted groups are encouraged to apply,” very often members of targeted groups are not applying, because they feel that very often they wouldn’t get an opportunity anyway. From an employer’s point of view, an employer would still have a larger pool of people to select from.

**Mr Derek Fletcher (Guelph):** Thank you for your presentation. A couple of things you said are interesting. Well, most of the things you’ve said have been interesting, but in particular it’s the education part. Part of the intention of the act is that the employer and employee groups, whether they be union-organized or not represented by unions or what have you, sit together to discuss the employment equity plan.

I believe this time of sitting together to discuss the employment equity plan, to identify barriers, is probably the best time for employers and employees to educate one another as to what is going on. That, as the gentleman said yesterday—I think that’s where he was talking about the start, that we have to talk. One of the biggest barriers to employment equity is the way people think. I believe again that once we start getting into employment equity, the thought barriers will start to come down.

You said in your presentation that when the federal legislation came through, all of a sudden there were more people asking about minority groups. In the community newspapers that you see, do you get a lot of advertising from the big companies as far as job opportunities?

**Ms Chu:** Some of the companies are approaching organizations like ours directly, so they can skip the step of advertising in the paper, but those that have advertised in the newspaper, I’ve noticed that there are more and more companies that are saying that they are—the catchword is “equal opportunity.”

**Mr Fletcher:** Equal opportunity employers, yes.

**Ms Chu:** We feel that the bill itself will create a general atmosphere to allow a lot of the companies to say, “Hey, we better get on with it.”

**Mr Fletcher:** Right. Once they start to advertise and start coming to organizations such as yourself, then what we are seeing is all of a sudden a change in perception. It begins to start the change, whether it’s

good or bad. As you said, they pick from different subgroups, but there is a change that goes on. I’m hoping that’s where the legislation will take us. I think it will, especially with the support of community groups. I think that’s important.

**The Chair:** Mr Winninger, do you want to ask one final question?

**Mr Winninger:** Sure. I think you put it very simply and eloquently when you say on page 6 of your brief, “Equity should simply mean giving individuals from target groups a chance to prove themselves.” I think Mr Carr is trying very hard to grasp the meaning of this bill but isn’t quite there yet, because he’s still talking about reverse discrimination, which the opposition members were talking about early last week.

**Mr Carr:** Don’t worry about whether I grasp it.

**Mr Winninger:** I think we’ve come a long way from that point. People have recognized that subsection 15(2) of the charter provides for special programs for the disadvantaged, to redress inequities. Section 14 of the Human Rights Code provides for a similar exemption and section 51 of the bill before us deals with that issue as well. So we’ve come a long way from the attitude that this is a case of reverse discrimination.

I think that in your brief you sum up what employment equity is all about, because it’s simply ensuring that there be fair and equitable access to employment opportunities, to promotion and to training on one’s merits. In the past, unfortunately, all too often the merits of these designated groups have been overlooked through the use of extraneous hiring criteria. I wonder if you could comment on that.

**Ms Chu:** A lot of time I know that the catchword today in hiring is that, “We need people to have good communication skills.” I talked to one placement officer the other day and he was saying that another employer used also another type of words. The employer was saying, “We need somebody who has a harmonious accent.” After a while, we do know that a harmonious accent is not my accent.

**Mr Mills:** Or mine.

**Ms Chu:** Communication skills sometimes can be brought to—do you think that I do not communicate well?

**Mr Carr:** You communicate very well.

**Ms Chu:** I communicate well. I think so too. But I do have an accent. Okay?

**Mr Callahan:** Are your fingers flexible?

**Ms Chu:** Sorry?

**The Chair:** Please disregard that.

**Ms Chu:** But a lot of time it was interpreted that because I speak with a certain accent or because I speak my words or the diction is not the one that is used in the Canadian workplace or corporate world, then I don’t



have that communication skill. This is one example that I can think of.

**The Chair:** I would like to conclude this morning's session by allowing Mr Mills to end it with some humorous remark that I think he has for us.

**Mr Mills:** Thank you very much, Mr Chair. I just want to thank you for bringing the real world into 1993 and into your problems. I must apologize, I wasn't laughing at you but with you when you said, "I want to speak to a real Canadian." In 1957 I was a policeman in this country and I used to have to enforce the law. I remember writing out a ticket and I'd say, "There you are, sir, thank you very much." And I'd bet on it, they'd always say, "Well, a five-dollar Canadian, eh?" or they would say: "I'm sure there are lots of criminals back where you come from. Why can't you go back there and look after them."

I'm telling you that in 1957, almost 40 years ago, the problems that we faced are still here in 1993, and we've got to do something about it, because I am sick and tired of it. Even today we've been having some remarks. Thank you for allowing me that, Mr Chair.

**The Chair:** I want to thank both of you for coming and for sharing those personal work histories with us.

This committee is adjourned until 1:30.

*The committee recessed from 1209 to 1333.*

AFGHAN ASSOCIATION OF ONTARIO

**The Chair:** I would like to call the meeting to order. I call the Afghan Association of Ontario, Mr Duranai and Mr Tahiri.

Just for the record, to remind the members that you've received the interim summary of recommendations, part 1 and 2, and I hope that will be useful to you as we get into the discussion of the bill.

Welcome to this committee. You have half an hour for your presentation. Please leave as much time as you can for the questions and answers from the different members.

**Mr Ahmad-Shah Duranai:** Our community, the community we represent, the Afghan community in Ontario, is a very new community and this is our first time that we come in front of a committee and present our stand on a particular issue. If there are some issues of protocol that we are not following, I would like your allowance in that respect.

**Mr Mills:** Don't worry about it, it's just like family here.

**Mr Duranai:** That's good. Our community is new in Canada and, as you all are aware, is here because of the turmoil in that part of the world. We have come here as immigrants and our community, the majority of our members, are not born in Canada. They are immigrants and they have done their education and most of their time they have spent outside Canada. So a com-

munity like us, we have specific problems that we are facing here.

A couple of issues that we have brought up in our submission here I would like to go over, and then you can ask as many questions as you would like. We did not have any legal counsel in reviewing this proposed legislation so we have gone over it ourselves and we have come up with these two issues that we want to bring to your attention.

The first issue is the definition of a "racial minority." The bill itself only mentions as members of the racial minority to be a designated group, but there is no definition per se as to what the racial minority represents.

In the proposed regulation that accompanies this legislation, it refers to a specific definition. It says a "member of a racial minority" means a person who, because of his or her race or colour, is in a visible minority in Ontario."

While this might be fine, we have a certain problem with it, and that is that there are many people who belong to racial minorities but are not visibly distinct. That's what we have a problem with. We have seen many applications in the federal government where they are more specific about whether you come from south Asia, west Asia, you are oriental or black or north African or African.

We propose that there be a more clear-cut definition in this regard and certain minority groups that will not come under the definition of "visible minorities" to be included in the benefits that this legislation will have.

The second problem that we face in communities like ours—there are many other communities that we have been in contact with—is the underemployment of the professional groups. We have a lot of educated people, engineers, doctors, scientists, economists and others, who cannot find work or jobs that are of the same standard as their level of education.

First of all, there are some problems for their certification here. We face a lot of problems in getting licences and certification because of either the lack of knowledge of the legal system here or climatic conditions in Canada etc for engineers and architects or, let's say, the liability insurance regarding medical professions and others. In this respect, a lot of our professionals cannot get certification.

Even those few who do succeed for one reason or another and they do get the certification, the work that they get is only in small firms. Most of the consulting, engineering and architectural firms hire maybe 20 people or 30 people and this legislation excludes these companies to comply with the requirement of the legislation. So in this respect this big resource that our community has, if they are fully employed to their education level, will have a great impact on the future

generation of these communities. They don't play a role model for our children because most of them are either delivering pizza or they are taxi drivers or doing some other work and they cannot get the proper employment that will benefit our small communities.

In this respect, we have reviewed the issue, but we don't have a clear-cut solution as to how to propose that these people could benefit from the advantages of this legislation.

1340

One thing was that if a specific provision can be made regarding these consulting firms—like there is already in the legislation some specific proposal made regarding the construction industry—if a similar provision is made in this respect that could include these firms that hire engineers and architects or medical professionals, pharmacists, to be included in the requirements of this legislation.

Thank you very much. I think that's what we had in mind. That's the problem our community is facing.

**The Chair:** Thank you. Six minutes per caucus. We'll begin with Mr Carr.

**Mr Carr:** Thank you very much. I appreciate the opportunity to listen to some of your suggestions. I was interested in the problem, page 2, the problem number 1, definition. Could you just clarify what solution you would like to see to the problem number 1 again?

**Mr Duranai:** Okay. If, for example, in the survey there is a questionnaire that would be submitted to the various employees in the various companies—if there is a further detailing of it as to people who consider themselves as members of minority groups, not to be just distinct, because they're either black or they're oriental or they're north African or African or Caribbean. If there is a more elaborate division of it, where people who come—I come from Afghanistan and I don't know under which category I will be considered as a minority member. I have applied for some jobs in the federal government and they say, "south Asian or west Asian," and when you go to details of south Asian or west Asian, Afghanistan is included in neither of them. South Asia stands just at the border of Afghanistan and west Asia also stands just at the border of Afghanistan. Afghanistan, for example, is not included anywhere in those distinct categories.

I propose that somehow some phrases or clauses are added where new immigrants to Canada as a whole could be included in this.

**Mr Carr:** The other question relates to the professional groups—and I know because I've had some occasion—some of the different qualifications between different countries. I know this question's been dealt with in a lot of other different areas as well, through a lot of different groups, but what is your recommendation? How can we best be able to allow some of the

educated, skilled professionals who come over here and who are underemployed—because I know of a couple of instances in my riding where that's happened, people with degrees and educated and so on. They come over here and because of some circumstances they can't get into the field, not so much—but because of some of the difference in qualifications. I know it doesn't deal specifically with this issue, but I think that would go a long way to being able to assist some of the people. Is there anything else you think can be done?

**Mr Duranai:** I think that in this respect I don't know how much can be done at the provincial level, but the Department of Employment and Immigration can do a lot in this respect. People who are coming new and their education level is established, in our opinion, I think they will require very little training in terms of those specific areas that are related to Canada. If I can just bring you an example: I'm a professional architect; I'm registered in the province of Ontario. This is my eighth year that I've been here and, besides my level of education, whatever requirement that was here, I managed somehow to pass all the requirements to get my registration. But in this respect I did not get any help from the Department of Employment and Immigration; it was due to my own efforts.

If certain training facilities are provided for these professionals, especially those of younger age, let's say, between 25 and 40, who, after one year of full-time education could be as proficient in their professions and trades as a person who has done four or five years of university education here, it could be a great asset to the Canadian society. I think that in terms of a national education policy maybe there can be a lot of rapport between the provincial and the federal governments in this respect, and it will reduce the burden on situations like this legislation is all about. If those people know about the legal system—an example would be the construction industry. The first thing that I had to know here was to be familiar with the building codes, the national building code as well as the building code in Ontario. If a person who comes here with an engineering degree or an architectural degree is given a crash course, through federal funding or provincial funding, to become familiar with the legal system here, with the climatic requirements that are different, it could alleviate the problem.

**Mr Carr:** Almost the time?

**The Chair:** One short one.

**Mr Carr:** Yes. Unfortunately, the question was a little bit long.

I was speaking to some manufacturers yesterday. One of the problems they've got in this is the high skill that's necessary for things like statistical process control. With a lot of older workers, they don't have that training. One of the keys to getting and keeping the good jobs is the education. Is there anything else we can



do? You mentioned people coming from other countries. Is there anything else we can do to ensure that they get the skills necessary when they get here to get the high-paying jobs?

**Mr Duranai:** There are some programs, on-the-job training, that have been funded through various organizations, I believe provincial sources as well as federal sources. But I don't think they go far enough to alleviate the problem on a mass scale. I think this is a problem, a very massive problem, for these small communities, and the amount of funding or the activity in this regard is not sufficient, or I don't know whether it's used efficiently, because we don't have any resources to investigate or to study how effective they are.

**Ms Carter:** Welcome to the hearings. I'd like to comment on your second problem here, which is the one of access to trades and professions. Obviously, this is related to what we're dealing with in this bill, but it's not really central to it. I think I should just point out that it applies only to people who are recent arrivals in Canada, which is not the case with most of the people who are being dealt with under this act. This doesn't mean to say that it's not an important matter, but I think it's being dealt with in what you might call a different part of the package than this particular act, that the Ministry of Citizenship is working with certifying groups to see if they can adapt their requirements to allow immigrants fairer access, and I believe \$2 million has been made available for that. So I think that that is being looked after in that way and that that's where it belongs rather than in this legislation.

Also, you suggest that small firms be included. I think again, we're looking at the whole issue of inclusion of small firms from a wider viewpoint, and that is part of the picture. So I don't know whether you have any comments on that, but I think that's the situation.

**Mr Duranai:** In this respect also, we have been in contact with the chief of staff of the Ministry of Citizenship. We had raised this issue, and we are aware of this access to professions and trades, but at present it's running just as a two-year project and I think it's experimental. We of course support this act and hope that it will expand and solve some of the problems of, I call them, immigrant professionals. I think it will reduce the burden on these communities. It's a psychological burden on these people, because after 18 years or 16 years of education, they feel as if it was a waste of time.

**Ms Carter:** Well, I agree with you that something needs to be done, but I'm just pointing out that it's not really this particular act that would do that.

**Mr Duranai:** In terms of small firms being included: If they somehow get included in the requirements of this legislation, it will definitely help some of these professionals to get into their professions or, let's say,

some of the strategic barriers that are now put in their way will be broken down.

1350

Otherwise, in general we support the legislation. It goes a long way to solving the problem in the minority communities, but somehow it does not address this problem. It's a major problem for the new communities in Canada, especially in metropolitan areas like in Toronto.

**Ms Carter:** Do I have more time or does somebody else—

**The Chair:** Yes, you do.

**Ms Carter:** Then your other main point I guess is the definition of racial minority. Some people have been to these hearings and suggested that subgroups be included in the definition of racial minorities. Is that what you're suggesting? Do you agree with that?

**Mr Duranai:** Yes. I think that could somehow resolve the problem. In racial minorities, if there are subgroups or subcultures or whatever terminology you use for it, I think it will alleviate some of the problems. If I go somewhere I could argue in that respect that I do come under this legislation. But otherwise I don't think—if I go there, before I speak anybody will realize that I belong to a minority group.

**Ms Carter:** I just wonder where the boundaries of this would be. Would somebody from, I don't know, Greece or Poland or what, would they be included, do you think?

**Mr Duranai:** In our opinion, yes. I think if they are new immigrants—if my son, for example, is educated here, he will not have any problem. I think he could proceed like the mainstream, majority Canadian society. But people who are immigrants here and they have language barriers as well as lack of so-called Canadian experience, these are the people who I think should somehow be included in the benefits of this legislation.

**Mr Curling:** Thank you for your presentation. I just want to follow up on Mrs Carter's comment that she wasn't quite sure if your second problem and solution fits into employment equity directly. Let me say, it does. One aspect of employment equity is access to employment. You're quite familiar with the Task Force on Access to Trades and Professions. One of the things actually that should have been done before and she commented on it that her government is now acting on it, and they are. They're acting on it in a pilot project.

Those recommendations have already identified those professions that are being hindered by professional organizations that do not get, as you said, certification. These are qualified people, also as you have said, who have been shut out. The whole idea of employment equity is to identify and eliminate systemic barriers. Those recommendations tell us how to go about that.

Let me put a question to you then. Would you see

legislators putting groups, either professional organizations, those who really certify some professions, to come under employment equity, that they could more or less conform—making the law be relevant—to the legislation to break down the systemic barriers?

**Mr Duranai:** In this respect, being myself a professional and belonging to one of these self-governing bodies, I think that, no, I would not require them to comply with it. But they can help a lot the new arrivals of these people who have done professional education in particular professions, that these organizations help them with what I call the pre-employment phase, which is licensing and certification.

But it will still not resolve the problem because after they get their certification and after they have their licence, only those people who belong to, let's say, very large minority communities and have entrepreneurial experience could start their own business, their own consulting firms etc and rely on their community base for their survival and getting work. But the others who look for employment will be employed only in these firms, because they are very small firms. In Toronto, maybe there are four or five firms in consulting engineering and architecture that hire more than 50 people. All the firms are very small, so if even these professionals do get over the hurdles in the pre-employment phase, which is the phase of certification and licensing, they will have employment problems.

**Mr Curling:** Let me give an example, because I'm not talking about small firms; I'm talking about professional organizations.

A young lady came in to see us yesterday and make her presentation. She was a doctor who was trained in Europe and practised in Spain and other places of that nature. When we came here she had to do certain upgrading, of course, which is required in order to meet the standard of Ontario, Canada. She did that and, again, she had to do an internship and could not get in to do her internship—here, as you said, is a qualified person who wished to do that—a hindrance for full employment and to avoid underemployment and to utilize those resources.

It seems to me that some of those organizations need to be looked at very closely, either the certification and they who have the power of access to, say, the hospitals, for them to do internship—that is being denied and something has got to be done to break those barriers down so that people can have access to employment regardless of the profession they are in.

**Mr Duranai:** Definitely, in this respect, I support that all the legislation that governs these self-regulatory bodies should be reviewed, although most of them in their beginning say that the purpose of this legislation and this body is to keep the high standard and quality of these professions. But at the same time, that could also be a barrier to new arrivals and it can be used and it has

been used, especially in the medical profession. We have many doctors here who have been struggling for years, reading thousands and thousands of pages of new material in order to pass the exams.

I can assure you, in my own experience, when I was sitting for my professional exam I had done about 4,000 pages of reading, and after I passed the exam I went and talked to people where I was working, with architects who have 15 and 20 years' experience; they couldn't pass those exams.

**Mr Curling:** You don't seem to be quite enthused about that approach that I'm talking about—implementing those recommendations in access to trades and professions and also monitoring those professional organizations as much. You don't seem to think that is going to help in any way. Do you agree that the government should continue to proceed only on a pilot project then and not implementing those recommendations?

**Mr Duranai:** I think as a result of the pilot project, they might realize where the main barriers are in the legislation itself and how the legislation which, let's say theoretically, is for the purpose of keeping a certain standard in the profession, is utilized as a strategic barrier for newcomers.

**The Chair:** Thank you, Mr Curling. We ran out of time. We appreciate your coming today and we thank you for the submission you made.

**Mr Duranai:** Thank you very much, everybody.

1400

#### ONTARIO PUBLIC SERVICE NETWORK FOR RACIAL MINORITIES

**The Chair:** I'd like to call upon the Ontario Public Service Network for Racial Minorities. I'd like to welcome all of you to these committee hearings. Ms Cossar, are you the spokesperson?

**Ms Yvonne Bobb:** No. We share the responsibilities between two of us.

**The Chair:** Fine, then Mr Lawson and Mr Burkett are just here in these discussions as well. We have half an hour for your presentation and we urge the deputants to leave as much time as possible within that half hour to allow the members to ask you questions. Please begin.

**Ms Bobb:** The Ontario Public Service Network for Racial Minorities appreciates the opportunity to present to you today. I'm Yvonne Bobb, vice-chair of the network and accompanying me, to my left, is Jim Noel, and George Anand to my right, executive members of the network.

**The Chair:** Thank you. I'm sorry. I just wanted to apologize. I was reading the names of the next group that will be presenting, and you didn't respond; I'm surprised. Thank you for putting that on the record correctly.

**Ms Bobb:** The OPS network was formed in 1989 as



a result of racial minorities being disfranchised, many of us relegated to low-paying categories in the OPS with no opportunity for training or career development. The network was inaugurated by former minister Honourable Tony Silipo. Our network serves as an advisory body to the Management Board secretariat, the review committee on employment equity, and also serves on several subcommittees specific to policy and implementation of employment equity and employment equity programs in MBS. We are also an advisory group serving racial minorities in both management and bargaining unit categories in the OPS. Our executive and steering committee is structured to encompass provincial representation.

Racial minorities make up 12% of the OPS and only 5% are represented in the executive compensation plan. For racial minority women, the statistics are more horrific. Racial minority women outnumber racial minority men two to one in the bargaining unit. However, in the management group, racial minority men outnumber women two to one.

The network believes that strong employment equity legislation will create a more equitable, fair and just workforce where skill, knowledge and experience will be the criteria in all aspects of employment.

I will now turn to George Anand, who will do our submission for the network.

**Mr George Anand:** Thank you for the opportunity. To start with, I must congratulate the government in power for introducing this legislation on social justice, which to our understanding has been the strongest so far on employment equity that has been introduced on any other level of government.

With this, we fully concur with the basic principles stated in the preamble, especially on page 3, second paragraph, which states that lack of employment equity is caused by systemic and intentional discrimination. Therefore, from our point of view, it is unrealistic to expect that employers would employ all those reasonable steps to redress the system issues. Therefore, it is all the more important that the language which we state in the bill should be as specific and definitive as possible and that accountability is clearly enshrined into the bill itself.

Coming back, we have heard arguments that in our present state of fiscal restraints, can we afford employment equity? We believe yes, we can. We believe that by introducing employment equity, especially at this time, we'll improve our competitiveness by removing systemic barriers and wastage in underutilization of our most valuable resource. That's manpower. It will add to the existing resources rather than take, and all this will add to increasing our competitiveness.

Second, I'm sure this committee has heard a host of personal tragedies, the people who have been the targets

of systemic barriers, their personal horrific tales, which definitely translates further into shifting the cost, because if you have unfair practices at work, definitely there's going to be more burnout and it does add to the existing health and welfare resources, and when it shifts, it's shifting the cost. When you shift a cost to health and welfare, there's not that much return you are getting back.

Again, we also believe that by eradicating systemic barriers it would not force disadvantage to any group, that by adding something we are not taking something from other individuals, but what we believe in is that it will add. It will add to the existing resources, rather than take something.

We also believe that the merit principle has been enshrined in the preamble to the legislation as we read it. We also believe that on merit or ability, it should not be based on one's gender, race, nationality and other forbidden grounds of discrimination. We also believe that the merit principle is lacking in its implementation at the present stage.

We also believe that there's a need for a separate Employment Equity Commission and tribunal, especially at this stage. We believe so because we feel that these bodies are needed to attack systemic barriers. We also believe that by creating these bodies, this will not weaken provisions contained in the Ontario Human Rights Code regarding equality of opportunity in employment. We believe it would strengthen those very provisions which are contained in the Ontario Human Rights Code, rather than weakening those provisions. We also believe the Ontario Human Rights Code as it presently stands is too broad in focus and in terms of scope of responsibility too wide to respond to the critical need to eradicate systemic barriers.

#### 1410

We also believe that the report of the Task Force on Access to Trades and Professions enhances the regulations pertaining to Bill 79.

About the bill itself, Bill 79, definitely we would have liked more time for feedback and clause-by-clause analysis. We also believe that the definition of designated groups, accountability and enforcement provisions presently left to regulations should be incorporated into the bill so that they are not amended and changed because of the vagaries and whims of a particular bureaucrat.

We also believe Bill 79 should be specific, with explicit provisions of accountability, enforcement, deterrence, reasonable progress and what constitutes essential ingredients of an employment equity work plan and should be able to define joint responsibility so that the designated groups with a lack of financial resources don't have to turn to the tribunal to define all these above terms. But if these terms are very specific and very understandable, then advocacy groups like ours

may not have any hesitation to represent the designated groups that we are supposed to represent.

Lastly, we believe we have long waited for this legislation. Considering the time period we are left with, let's use that time to strengthen the legislation, but for God's sake, let's not postpone it. We have waited a long time for this legislation, and as we move along, we should have the mechanisms in place which monitor the legislation and strengthen it as we learn more out of the experience.

**The Vice-Chair (Ms Margaret H. Harrington):** Would you like to continue or are you completed? Thank you very much, Mr Anand and Ms Bobb. We'll begin with the government members, and I have three on the list. Ms Akande?

**Ms Akande:** Thank you very much for coming forward. It takes a great deal of courage and determination to speak of your situations in this place.

The Ontario government has had an equity policy for some considerable years. Do you remember what year? I'm not sure, but it doesn't matter—for a long time. They've also had people assigned to equity positions. They've also had a process in place. Why then are the results so poor, the results you referred to at the beginning of your presentation?

*Interjections.*

**Ms Bobb:** Maybe seeing that I am an old veteran, they've passed it on to me.

In terms of what the Ontario public service has had in terms of equity, I think you're referring to affirmative action.

**Ms Akande:** That's right.

**Ms Bobb:** I think for us, particularly racial minorities, affirmative action did not address our concerns because we were not able to access training or promotional opportunities because of the systemic barriers that are in place, for instance, language, how jobs are posted, the interviewing process. It was not fair and equitable. It is still not. So I think that is one of the reasons why affirmative action was not successful in the public service.

**Ms Akande:** What do you mean, "language"?

**Ms Bobb:** The language in how we post jobs, how we advertise jobs and the methods we use to advertise to attract racial minorities. They are barriers more than enhancements.

**Ms Akande:** Are you in favour of subgroup identification in specific targets, for example, if we're talking about visible minorities? Are you in favour of there being subgroup identification beneath that broader category?

**Mr Jim Noel:** Yes, we are in favour of identification. We think that it's necessary to be able to be clear on which groups are involved and which groups are

being affected most significantly by the processes and procedures that we have in place now. It's only in that way we can really target the remedies that might be necessary for those groups. We have been trying to deal with this process, sort of all visible minorities. There are some visible minorities that for one reason or other—in other words, we have to recognize that within a general category there are differences and we need to have the flexibility to take those differences into account.

**The Vice-Chair:** Thank you. Mr Winninger.

**Mr Winninger:** As you know, Bill 79 confers on bargaining agents joint responsibility for developing employment equity plans in unionized workplaces. I was wanting to ask you whether those bargaining agents should have access to workplace data, particularly as those workplace data affect an individual's designated group status.

**Mr Anand:** Yes, we strongly support the joint responsibility, we strongly do endorse this partnership and we also believe, as we have indicated in the presentation, that it should be more clearly defined because the union representatives are supposed to be one of the key stakeholders. Along with that responsibility, they also need certain powers too, at the same time, and those terms are lacking in the present bill, the definition of joint responsibility.

**The Vice-Chair:** Thank you. I now have Mr Fletcher.

**Mr Fletcher:** You were going to say something else?

**Ms Bobb:** I was going to add on to his response in terms of the union having access to data. I think for many of us in the bargaining unit, and I'm in the bargaining unit, unless the union has access to the data, it would not know exactly what the true picture is. So I think it's important that the union does have access to the data.

**Mr Fletcher:** I see. As far as Bill 79 is concerned and some of the other statutes that have been enacted, the pay equity affirmative action that we talked about previously and now employment equity, we're trying to move along in a certain approach, a certain way that we can start eliminating some of the discrimination that goes on. But as I have said before, a lot of the barriers are up here in the mind. That's where a lot of barriers exist. As far as the access to trades, I know that the task force was releasing a report this morning on access to trades and professions, so the government is acting in that area. Whether it's going to be fast enough or not, we're not sure, but hopefully we can move in that area also.

When I look at employment equity in the government sector—and you may not want to answer this question; I'm not sure—is OPS, is the government sector any better than anywhere else?



**Mr Curling:** Good question. I like it.

**Ms Akande:** Answer it.

**The Vice-Chair:** Can you make it a very short answer, because I'd like to move to Mr Curling in a moment?

**Mr Noel:** I do not think that the OPS is significantly better than anywhere else. There are a number of plans that have been put into—or at least attempts have been made to implement a number of programs. The point is that after three years or so, there is no very visible change and the real bottom line is change in the faces that you see there, especially at the senior management level. You look there and you don't see the visible minorities. So no matter what action has been taken, the fact is it has not been bearing fruit.

**The Vice-Chair:** I'd like to call on Mr Curling now.  
1420

**Mr Curling:** Thank you, Mr Fletcher, for opening up a question that I hope I can do justice to by asking you this too. If I were answering that, of course, from the reports I'm hearing from people who are coming to me, absolutely it should never be the example, as Stephen Lewis said, that we should use to epitomize as a good example.

Maybe you could comment on this. The NDP government decision lately to cancel the employment equity internship program, is this sending a message that in tough times those are the first things to go? The government is an example, when I heard of the cutting of the internship program. Do you have any comment on that, when they have cut the internship program?

**Mr Noel:** Yes. I think it's a sad thing that the government has made such a decision. From personal experience, I know that some of the best staff we have developed, some of the best resources have come out of that apprenticeship program because of the way people are screened, because of the kind of training they go through and because you eventually get people who are really motivated, who are really bright and who are really flexible to deal with some of the issues and the problems that we have. We get really good people out of them. So it is a sad thing that program has been shelved. But in terms of organizational dynamics, you find that whenever things get tough, things like training and development and recruitment and so on are the first to get cut back.

**Mr Anand:** Just to add to what Jim has mentioned here, we also believe that employment equity, as an application of the human justice system, should have precedence over any other legislation, including the social contract.

**Mr Curling:** It doesn't seem so when times get tough for the government. Could you comment on the seniority part in the employment equity legislation? Do you feel that seniority conflicts in any way with em-

ployment equity principles?

**Ms Bobb:** I think I'll answer that. I think that is just a smokescreen, because if seniority really applied, many of us wouldn't be here fighting for employment equity. Many of us are women and men who have served in the service for 30 years and are still at the entry level. So seniority is not an issue in terms of employment equity. I disagree with that argument of seniority, because racial minorities have seniority.

**Mr Curling:** And they're still not getting promoted?

**Ms Bobb:** They're still not, and I'm saying it's not an issue in terms of equity.

**Mr Curling:** Many groups have come before us, groups like yourself, that have been subjected to systemic discrimination. I'm very happy that this Bill 79 has come forward and I'm happy that it has been presented. I'm very disappointed that the bill is very vague; it's extremely vague and lacks definition itself. Someone earlier on said in a presentation here that to put legislation forward that is weak could do more damage to the gains that have been made. Do you believe, as someone says, it's better to get the crumbs than to get the bread and to be grateful for what is gotten now? I'm asking, do you think this bill needs a lot more improvement to make it effective?

**Mr Noel:** We do. However, we recognize the realities of politics and this bill is part of the fallout of the political system. I think the concern is that if the bill were deferred for one reason or the other, it may not see the light of day again, and therefore this is the reason why some people might be saying, "Even if it's not as good as we would like it, at least it's a start, so let's get that in and then try to move from there."

**Mr Curling:** Let me just comment here, if you count over here, one, two, three, four, five, six and the Chairperson, there's no way that this bill will be put off, no way. It will go through. I want to get that bit out of people who are presenting here. There's no way. They have the majority and they'll put it through.

Our job here is to make sure that we have strong legislation, so I want to tell the people out there that Bill 79 will go through. We're going to make sure that your presentation will make that change so we have an effective bill, so don't let them scare you that they'll postpone it because of the opposition.

**Mr Anand:** As we said in the beginning of the presentation, this bill is still the strongest bill—

**Mr Curling:** Because it's the only one.

**Mr Anand:** —compared to what we have seen at the federal level, employment equity, which virtually everyone has dismissed as irrelevant.

**The Vice-Chair:** We'll just move to the third party. They may want to continue in that direction. Who would like to ask a question?

**Mr Carr:** I'll go. During your presentation, you talked about how the present plans have been a failure and you gave some of the indication, percentages, and I guess governments in implementing them thought they were going to be effective; when they happened they were not. What's the difference between those plans and this bill that's going to allow, two years from now, for you to come forward and say now it's been a success? Specifically, what's the difference between this bill and what we've done in the past? Why will we be successful now when we haven't in the past?

**Ms Bobb:** First of all, I'd like to say that if there is legislation, I believe that employers will have to comply with legislation. In terms of affirmative action, there was no need for the employer—you can do it if you want, you can have affirmative action if you want or if you don't want, and I think that's what has happened, and affirmative action when it was implemented only addressed the needs of women, and particularly white women. I think it's incumbent upon me to make that distinction as a racial minority woman, and I think if there's legislation, I believe that this legislation over racial minorities and the designated groups will have a better chance and a better opportunity within the OPS.

**Mr Carr:** I understand that different groups may have benefited to different degrees, is what you seem to be saying. Let me be specific then with regard to women. You say that the program the government has implemented already, and let's just take them specifically, has it been a success for women then?

**Ms Bobb:** For racial minorities, no.

**Mr Carr:** But for women in general.

**Ms Bobb:** For women, yes, white women, yes.

**Mr Carr:** So on the one hand you're saying the present program doesn't work, although it has worked for women.

**Ms Bobb:** Yes.

**Mr Carr:** Would the same principles, if we applied them for example to minorities, if the same principles applied without this bill, would we be successful like we have with women in the public service then?

**Mr Anand:** Part of our argument, as Yvonne said, is that there's a difference between having volunteer action rather than having the legislation. The legislation definitely has more force, and it does instigate the right kind of debate that we already see has taken place. It's since the bill has been introduced and the kind of discussion that has taken place; we have been looking for that kind of discussion for a long time, but as a result of the introduction of this bill, we find that kind of discussion being generated. It does put more responsibility on the employer and on the other stakeholders to participate in the bill, and there's more joint ownership.

**Mr Carr:** You seemed to indicate that seniority isn't

working now. In answer to one of the questions, you said that seniority isn't working, otherwise you wouldn't be here.

To put it bluntly, there's sort of a grey area with the issue of seniority. It's been left, as Helen Cooper said this morning, very vague. To be very cynical, I think it was done that way purposely. What would you like to see in terms of seniority working in conjunction with this bill? You say it isn't working now. How can you see it working?

1430

**Ms Bobb:** No, what I said was that seniority is not an issue. That's what I said.

**Mr Carr:** Didn't you say if seniority was working—

**Ms Bobb:** I said seniority is not an issue. It's just a smokescreen. If opportunities were equal, then many of us in the designated groups—

**Mr Carr:** Who had been there longer.

**Ms Bobb:** That's what I said.

**Mr Carr:** So how do you see seniority working? How would you like to see it work in the second part?

**The Vice-Chair:** Could you quickly answer this question, please? We're almost at the end of our time.

**Ms Bobb:** I have no problem with seniority at the moment. It works. It would work in conjunction with legislation.

**The Vice-Chair:** I would like to thank you very much for your presentation on behalf of the Ontario Public Service Network for Racial Minorities.

**Mr Curling:** Could I just ask if the government officials could present any statistics on, say, the last five years on how many minorities have been employed within the government services, and how many have been let go, laid off, in the last five years? That would be helpful with some of the concerns I've heard expressed here.

**The Vice-Chair:** I will ask them and let you know before we dismiss today if they will be able to give you that information.

**Mrs Witmer:** Madam Chair, have we been receiving, or am I somehow missing, the presentations that are coming in from individuals who are not—

**Mr Fletcher:** They didn't have one.

**Mrs Witmer:** No, not these individuals. I've been made aware of presentations that have been sent to the committee and I'm not getting those copies. I wondered if we could receive those as quickly as possible.

**The Vice-Chair:** I'll ask the clerk; just a moment. The clerk has informed me that there are presentations that have been sent to the committee. They are presently being photocopied and we hope to get them to you today.

**Mrs Witmer:** Thank you very much.



## INSTITUTE OF EQUALITY AND EMPLOYMENT

**The Vice-Chair:** I would like to welcome the next presenters. We have three presenters, I believe, on behalf of the Institute of Equality and Employment. Would you please introduce yourselves. You have half an hour, and could you make your presentation 10 to 15 minutes to allow for questions. Please go ahead.

**Mr Brian Burkett:** I am Brian Burkett from the law firm of Heenan, Blaikie. I'm here on behalf of the Institute of Equality and Employment.

**Mr James A. Lawson:** I'm Jim Lawson. I'm with the Toronto-Dominion Bank.

**Ms Jocelyne Cossar:** I'm Jocelyne Cossar with Eveready Battery of Canada.

**Mr Burkett:** We've provided a paper which I hope has been distributed. We'd like to thank you initially for the opportunity to speak before this committee. The comments that we are going to make I think mirror what's contained in that paper.

The starting point is that we would like to note the positive direction set by the regulations that were passed in June of this year. In that regard, there would be five or six points that we'd like to quickly just refer to.

First of all, the regulations permit individual employers to implement employment equity initiatives that are most suitable to their own organizations. This is a positive development.

Secondly, in terms of numerical goals, in the regulations, specifically section 21, they have based numerical goals on the concept of opportunities for entry. Again, this is a positive development.

Thirdly, in the area of duplication, the regulations have tried to avoid duplication in respect of a number of items, including workplace surveys in section 7 and the review of employment policies and practices. That's another positive development.

Next is self-identification, a concept that the institute endorses. The regulations are predicated on the concept of self-identification, a positive development.

Finally, in the area of comparisons, there are two positive developments that we have seen. First of all, the geographic scope has been based on a municipality standard in section 22, and in section 24 of the regulations a qualified and available labour pool has been referenced.

Having noted those positive developments, that's the context in which we make our subsequent comments which may touch on continuing problems that we see or refinements on changes that have been addressed in the regulations. What I would like to do over the next few minutes is simply catalogue those problems or refinements that we would like noted. I would mention once again that they are dealt with more fully in the paper that's been provided to you.

The first area is that of harmonization. By that, I mean harmonizing the statutory obligations found in both the provincial and federal statutes. There are a couple of concerns in this area that we would like to see addressed. The first is in respect of the definition of "visible minorities." There is a different definition in the two statutes. It is hoped that the existence of the different definitions will not cause the commission to conclude that the results of a survey conducted under the federal law is not, and I take the language from section 7(b) of the regulation, "likely to be the same as" a survey that's been mandated under Bill 79. The solution to this potential problem of course would be a common definition for "visible minorities."

The second concern, under the heading of "Harmonization" that you find in the paper, relates to seasonal employees. As you are aware, employers covered by the federal contractors program do not have to survey seasonal employees. Under Bill 79, the same employer would have to conduct a separate survey for seasonal employees. This gives rise to some questions and concerns. Can the employer use the same survey instrument in dealing with seasonal employees as has been used under the federal contractors program in respect of the other employees? If this same employer must use a different survey instrument, that being the one mandated by Bill 79, then it gives rise to potentially two sets of data that are difficult to consolidate. That is the second issue that we would like considered in connection with the harmonization features of the employment equity legislation in Ontario.

The second issue I'd like to address is that of self-identification. As expressed before, it's a concept endorsed by the institute; however, there are a couple of concerns. The first relates to the experience at the federal level. At the federal level, the experience has been and was that initial surveys were sometimes inaccurate; inaccurate because individuals did not want to self-identify or because individuals inaccurately self-identified, to give a couple of examples.

As a result of this reality that occurred in the federal sector, the submission that we're making is this: first, that employers have an opportunity to express, for example in reports to the commission, deficiencies they have found in the initial survey; second, that there be an opportunity, and that it be clearly stated in the legislation, to resurvey, hopefully following further education and communication with employees and in anticipation that the subsequent survey will be more reliable than the initial survey.

1440

The third area we'd like to touch on is in relation to comparisons, in particular the concept of "working-age population" which is found in section 24 of the regulations, section 24 of all the sections being the most difficult read, I think. I think as you work your way

through section 24, what you'll find is that there's a range of mandated comparisons, from the broadest, being designated group members in the working-age population, to something narrower, which is designated group members in the population who are qualified and available to do the work.

Briefly put, the position of the institute is that the first category is so broad as to be irrelevant and that it's really the second category that's the correct comparison, that being the labour pool of qualified and available individuals.

Moving to the issue of accommodation, in section 19(2) of the regulations the concept of accommodation is extended to all designated groups; further, in the case of the disabled, section 20 of the regulations sets out specific measures of accommodation. This gives rise to some concerns, and they really focus on the tension that's generated between potentially two pieces of provincial legislation, the human rights legislation and employment equity, tension that should be resolved before we do end up with two pieces of legislation.

The difference between the employment equity legislation as proposed and the human rights legislation is that accommodation in the employment equity legislation will apply beyond the disabled, which is a significant difference from the Human Rights Code. The Legislature, in its wisdom, has chosen not to amend the Human Rights Code in the past to extend it beyond the disabled. What we are identifying, we believe, is a significant difference, yet one which has not received a lot of attention and may remain somewhat ill defined at this stage.

In the specific case of the disabled, first of all there's probably no need to identify specific measures of accommodation. Employers will attempt to accommodate, in their wisdom, in a way that's appropriate in the circumstances in their organizations. If they haven't done it properly, the human rights legislation exists as a means to ensure that it is done properly.

Secondly, though, and more troubling, we have a duplication of proceedings, an overlapping of jurisdiction, which can only lead to some confusion, to a multiplicity of proceedings, something that we believe should be avoided.

The final point we'd like to make on the heading of "Accommodation" is that when you read the regulations, wherever the word "accommodation" appears, that's all that's there. Our preference would be that it refer to "reasonable accommodation." The concept of "reasonable" efforts is certainly not foreign to the bill or the regulations; I refer you to sections 19 and 23. Similarly, that approach should be taken in connection with the concept of accommodation.

The final point—and I will be brief on this—is what we have called codetermination. Simply put, in Bill 79,

subsection 14(6), a trade union representing employees, the subject of a survey, has access to a very broad range of information and data, information and data that may very well go beyond the bargaining unit and that may very well relate to strategic planning information. I assure you that if the legislation stays just the way it is, I would have thought there would be a lot of litigation, unfortunately, over exactly what is the scope of that section.

Our submission today would be that while fully accepting the wisdom and need to work with the trade union in effecting employment equity objectives, the flow of information should be a little more curtailed and it should be confined to the bargaining unit and it should relate to historical data.

On that point, I would mention that once again there may be some tension developing between two pieces of provincial legislation: on the one hand employment equity, on the other hand the Ontario Labour Relations Act. Under the labour relations act, under the duty to bargain in good faith, trade unions have access, by way of inquiries and in certain instances on the initiative of the employer as required by the law, to all kinds of information that is relevant to the bargaining process. It may be that what's being created here is some tension in the sense that the trade union is acquiring information that really transcends what's required under the labour relations act.

Those are our initial comments. The context is that there are many positive developments in the regulations, as noted. We simply have these remaining concerns, which we've tried to address quickly in these 15 minutes.

**The Chair:** Thanks very much. Four minutes per caucus, Mr Curling.

**Mr Curling:** Thank you for your presentation. As I was trying to read along with you here, I didn't see anything about the seniority rights. What is your feeling about seniority, whether or not it conflicts with the principle of employment equity?

**Mr Burkett:** We weren't trying to address that issue. In fact, in the time allotted, we have tried to prioritize the concerns of the institute, and so we weren't dealing with what is a very difficult issue, actually, that of seniority and balancing the interest of a number of parties.

**Mr Curling:** Let me deal with one that you have identified, and I appreciate your candid view there, joint responsibility. It seems to me that when drafting up the employment equity plan at the table with the unionized individuals and the employer, nowhere is the non-union person there. It is mentioned somewhere very vaguely that they will be consulted. I'm not quite sure what that means. What is your view on that?

**Mr Burkett:** Well, I think what you want to have



happen in the workplace, whether you're dealing with unionized or non-unionized employees, is that they have a proper role in the process in defining what the objectives are and then obtaining those objectives.

**Mr Callahan:** Can I ask you—you were very pleased that the government finally brought out the regulations so that you could review them. I wasn't sure whether in your presentation you expressed what has been heretofore a common thread that's run through these hearings, the concern of people that much too much of the substantive provisions of this act are dealt with by regulation.

It's interesting for people who don't know how this place works. Perhaps for the people watching and perhaps the people in attendance, they talk about them as being regulations made by the Lieutenant Governor in Council. I guess everybody has this concept that Hal Jackman or Lincoln Alexander comes down the hall and gives his blessing to this, when in fact what it is, and I think everybody should know, the cabinet of whatever government's in power simply saying, "Fiat" and that's it; no debate in the House, no protection for the public, a totally dictatorial way of dealing with legislation.

1450

Having explained that hopefully to the people watching and anyone else who doesn't understand it, have you addressed that or does it give you concern that the real mechanism behind making this thing work is left in the hands of the government of the day of whatever political stripe and can be changed in a flash behind closed doors?

**Mr Burkett:** I'm not sure that the question actually requires an answer from us.

**Mr Callahan:** It's somewhat rhetorical.

**Mr Burkett:** I think it's probably best left in your court. What we have tried to do is take the substance and try and put some priority on the issues that we think remain to be addressed. I'm not commenting on the validity of what you just said. That's part of the political process and I think you're identifying what you see as a problem. But I'm not sure it really requires our input.

**Mr Callahan:** Just as a lawyer, is it not a legal principle that regulations should deal with the mechanical workings, not the substantive portion of a bill? That's what is happening here.

**Mr Burkett:** There's no question that as between a statute and its regulations, the key document, the major document is the statute, not the regulations. What you find, though, in this statute is that it is very bare bones.

**Mr Callahan:** That's a very large basket clause.

**Mrs Witmer:** Thank you very much for your presentation, Mr Burkett. Just to follow up on the regulations, is there—and I do appreciate very much the focus you've given as to the need for some changes to

be made and the priority in which you see them to be made. But regarding the regulations, is there any section within the regulations that you feel would most appropriately belong within the bill if any changes were to be made? We've had numerous presenters ask us to make those changes. Is there one section?

**Mr Burkett:** I find that question, actually, fairly similar to Mr Callahan's in that I'm not sure I am here today to advise you on what should be in the statute and what should be in the regulations. I sense that your view would be that there should be more in the statute, which would prompt a series of different proceedings. I'm not agreeing or disagreeing with it; I leave that to you.

**Mrs Witmer:** I appreciate that; it's just that I guess many of the groups before us have asked that some changes take place and I just wondered if your group had given any consideration to that.

You talked about the self-identification and the problems that had been experienced at the federal level. I think you're the first group to suggest that an employer should be able to resurvey, if necessary, at any time. Do you see any problems from the employee perspective with giving—

**Mr Lawson:** Maybe I could comment. I'm here as a living example, being a bank, of a company that has had some experience with employment equity. We had this very experience where first of all we surveyed, as we were required to do under the federal Employment Equity Act, and our numbers were quite good. But then we started looking around at people who particularly were visibly disabled and those in our organization who have the confidentiality about the information started intimating that there was some concern between the numbers of people who had identified as disabled and individuals who they knew of by seeing them who in fact had not identified.

We did some thinking around this subject and ended up going back and resurveying with a much better communication program and our numbers changed dramatically, particularly in that area.

**Mrs Witmer:** How did you communicate? I think that is the key if you're going to get accuracy in the survey. What tools did you use and how did you accomplish that?

**Mr Lawson:** We used whatever we could. We used meetings; we used employee communication vehicles and really went back and tried to explain and help people understand what the categories meant so that they would feel more comfortable with the process.

I would add a further thing, though, that the whole process of employment equity is really evolutionary within a company. It's formed initially to a company's culture. When a company first introduces this, you almost have to assume that given that self-identification is voluntary, many people will be somewhat reluctant,

for whatever reason, to identify themselves. But as time goes on and as communications—if the company is responsible about communication—continue to take place, more and more people begin to realize that this isn't something that could be detrimental to their career or their future or whatever, and that, plus the communication program, would probably result in much better statistics in a second go-round.

The dilemma, though, that a company faces is that if it does its first survey, it might well be that people who have an opportunity to review those numbers will look at them and say, "Ah, that's bad; the numbers are awful," and make some assumptions. Perhaps it could even lead to some legal action against that company based really on what we would call preliminary data, given the fact that employment equity, being a cultural thing, has to get built in and does take time.

**The Chair:** Mr Fletcher, and then Ms Harrington.

**Mr Fletcher:** Thank you for your presentation. Unlike what other people are saying, I do have faith in other governments. Each party has said, "Yes, we believe in the commitment and the need for employment equity." I can't see another government coming along and doing something strange to the legislation that is going to put an extra burden or take away or something once it's in place. So I'm not worried about that. Once something is in place usually—and as I said, the other parties have agreed that there is a need for employment equity, so I think the commitment is there from all parties. I don't look that far ahead and distrust governments as much as maybe we do ourselves.

I'm looking at your part about the information for trade unions and I recognize, in fact I know there are some unions which would say: "We don't want anything to do with this because it's not our job to hire people. It's management's job to hire." So there could be some reluctance even to get involved, from a trade union.

As far as the information is concerned and the discussions that go on with the trade unions for the implementation of the plan and what's necessary for the plan, it's a grey area. Where do we end? I mean, where does it end? Where does the information-gathering end? Do you have suggestions on how we can get around this bit of a dilemma that we are in? I agree with you that there is some information that's totally unnecessary for the bargaining agents to have as far as an employment equity plan. I'm just wondering, do you have something in your mind? Have you formulated some area?

**Mr Burkett:** No, I haven't drafted any language, for example. But as I was saying earlier, I think if it was confined to the bargaining unit—and this may be more conceptual—and it relates to historical data, those may be the sorts of parameters that you want to set, because as it's drafted, you're right that some unions will say, "I don't want any part of that." There are other unions

which will say, "I want to get as much of that as I can get." It can apply in ways beyond employment equity and I think that's to be avoided.

**Mr Fletcher:** Yes, I agree. There has to be some area where we, instead of getting into the strategic plan of the corporation, of the company, for years down the road and things like that—

**Mr Burkett:** We have very well developed jurisprudence from the Ontario Labour Relations Board as to that type of information which the trade union is entitled to, and it's quite extensive. In fact it has to be tendered by companies when that plan has become a probable decision, for example. So it's very well developed. It's very mature.

**The Chair:** Ms Harrington, one last question.

**Ms Harrington:** I appreciate all of your input and your expertise because having this background of what you have already done certainly helps us formulate this legislation. I'm sure our staff are listening to some of the technicalities that you have referred to that we are concerned about. I was especially struck by your comment that several surveys are needed and communication in the meanwhile to make sure that you're getting an accurate picture.

1500

My question is with regard to firms that have a smaller number of employees than 50 and how they are exempt from the legislation. Do you see this in any way as being unfair, that those firms, the larger firms, have in fact more human rights, as one of our presenters put it this morning, or a higher level of human rights?

**Mr Burkett:** I suppose sometimes, and you find this in most legislation, you have these arbitrary cutoff points: Is it 50? Is it 45? I think that's all that the legislation is trying to do. It may in part relate to the ability of smaller employers, especially in this difficult economy, to undertake this sort of exercise. It may be an acknowledgement of that fact. But I'm just presuming; I'm not the drafter.

**Ms Harrington:** I think we're all presuming that this legislation eventually should apply to everyone.

**Mr Burkett:** Well, employment equity comes about not just by legislative initiative; it should end up as a cultural thing, and in fact that's already happening in this province. So there are other ways in which, although a smaller employer as defined in the legislation is not included in the legislation, employment equity is very alive in those operations in any event.

**Ms Harrington:** But we still don't have a measurement to ensure that.

**The Chair:** Okay, we ran out of time, unfortunately. I want to thank all three of you for the submission you have made here today, and thank you for participating in these hearings.

**Mr Burkett:** Thank you very much.



MICHAEL ALEXANDER

**The Chair:** I call upon Mike Alexander as the next presenter. Mr Alexander, you have half an hour for your presentation. I don't know whether you're reading your submission or not, but—

**Mr Michael Alexander:** Yes, I'd like to read a submission, Mr Chair, for about 15 minutes and then—

**The Chair:** Very well. Please begin any time you're ready.

**Mr Alexander:** First of all, I'd like to thank the members of the committee for allowing me to speak here today to my concerns about Bill 79. I'm not here representing an interest group or a business or a political party; I'm simply appearing as an independent. I work in this province as a lawyer and a public policy consultant.

This afternoon I want to take issue with the claim that Bill 79 is an equal opportunity measure that will promote a merit-based employment system. This claim has been made by members of the government, witnesses at these hearings and it is also contained in the government's consultation paper entitled *Opening Doors: A Report on the Employment Equity Consultations*, which promises a public relations campaign "to dispel tenacious myths such as employment equity means hiring unqualified people."

I believe that employment equity in its current form does mean hiring unqualified people. To see why it does, we must consider the meaning of "equal opportunity."

Simply stated, equal opportunity in employment means that people are not discriminated against on the basis of race, gender, ethnic background, sexual orientation or physical handicap, and that people are therefore hired and promoted on the basis of individual merit. Under this definition, I submit that Bill 79 will not secure equal opportunity for the people of Ontario.

Bill 79 will undermine equal opportunity because the bill's overriding aim is to ensure that the representation of the four designated groups in the workplace equals their representation in the community. This is a praiseworthy goal. However, nowhere does the act state that considerations of merit must ultimately govern employment decisions. Nowhere does the act guarantee that the principle of equal opportunity will prevail.

Thus, the real danger of the bill in its present form is that it will compel employers to set quotas for the designated groups and hire and promote individuals on the basis of their membership in those groups—that is, on the basis of race, gender or ethnicity—in order to achieve the goal of representational parity. In other words, the act will force employers to discriminate in favour of members of designated groups and against everyone else.

In what follows, I want to briefly address three

points. First, I will explain how the act will force employers to establish quotas and disregard merit. Second, I will argue that the element of quotas may make this scheme unconstitutional. Finally, I will argue that Bill 79 will tend to increase discrimination and division in the workplace.

We must begin by recognizing that the basic goal of the act is radical; it is to ensure that each designated group is represented in every job category of every public and private enterprise in proportion to its representation in various communities around the province.

Since it is very unlikely that any employer will already have a workforce that is perfectly engineered to reflect the representation of designated groups in the community, the act will force every employer to establish an employment equity plan that will eliminate discriminatory practices and "implement positive measures for recruiting, employing and promoting" members of the designated groups.

In pursuit of these aims, the employer must establish qualitative measures and numerical goals which are to be achieved during the three-year term of the plan. According to the draft regulations, numerical goals represent the proportion of opportunities—that is, hirings, promotions, or transfers to fill new or vacant positions—reserved for members of designated groups during the three-year term. As the act expresses it, the plan must be linked to "specific goals and timetables." The language of the act and draft regulations could not be more precise: Employers must establish quotas, that is, reserve positions for members of designated groups.

By forcing employers to create their own quota systems the act will institutionalize reverse discrimination in the workplace. In many cases, individuals will be given employment opportunities based on race or gender rather than individual merit, which means in turn that the most qualified individuals will be denied the same opportunities because they lack these arbitrary attributes. In other words, meritorious candidates will be excluded from opportunities because they are not members of government-designated groups. And note that white males will not be the only group to suffer reverse discrimination; qualified men who are visible minorities could also be excluded on the same basis if their group is not included in an employer's plan, which may happen if the group is overrepresented or the government has not placed the group on the list of designated groups. There could also be discrimination between designated groups as, for example, when an employer must pass up hiring or promoting a qualified man who is a visible minority in favour of a less-qualified woman to meet the plan's goal for promoting women.

In defence of the act, it must be pointed out that employers can expand or limit quotas depending on whether skilled individuals exist within a business or in the relevant labour pool. This seems to suggest that

employers will not be required to fill positions with unqualified candidates but need only hire those who truly have the skills. However, the danger of hiring and denying people for the wrong reasons will remain. The issue in most affirmative action plans is not whether someone possesses the minimal skills or qualifications needed for the job, but whether the most qualified candidates must be passed over in favour of the less qualified. Since the primary goal of the act is to increase the representation of designated groups in the workplace without any reservation on behalf of merit, the act will tend to compel employers to hire people who are only minimally qualified, that is, if they wish to avoid trouble with the authorities. So, in the end, people will often be hired and promoted on the basis of race, gender or ethnic background in order to meet quota targets.

1510

Turning now to my second point, I would like to address the issue of the act's constitutionality. The leading constitutional decision on the use of quotas to create a "representative" workforce may place the legality of Bill 79 in doubt. In *CNR v Canada* (CHRC), Administrative Law Reports 172 (1987), the Supreme Court reviewed an affirmative action plan which the CNR had been ordered to adopt by the Canadian Human Rights Commission to improve the representation of women in its blue-collar workforce. Since only 6.7% of blue-collar jobs were held by women in the CNR, the St Lawrence region, as compared to 13% of the blue collar workforce nationally, the Human Rights Commission found that systemic discrimination existed at CNR. As a result, it ordered CNR to reserve one in four blue collar jobs for women until they represented 13% of the company's local workforce. In making this order, the Human Rights Commission relied upon its authority under section 41 of the Canadian Human Rights Act to order "special programs to prevent future discrimination." The court held that affirmative action could be used to remedy past and future discrimination and ruled, therefore, that the CNR scheme was legitimate.

At first glance, the CNR decision appears to provide direct support for the basic principle of Bill 79, that is, that the underrepresentation of a minority group proves that the group's members have suffered historical discrimination and that they deserve special treatment. But there are two points which might distinguish the CNR's plan for future employment equity plans in Ontario.

First, while the court in CNR indicates its approval of an affirmative action plan designed to increase the representation of a disadvantaged group, its ruling is based on the interpretation of the human rights statute. The case did not decide the issue of whether the statute and the plan developed under it were consistent with section 15(2) of the Charter of Rights and Freedoms,

which legitimizes affirmative action programs for disadvantaged groups. In other words, while we know that section 15(2) allows the provinces to establish affirmative action programs, the CNR case does not tell us whether section 15(2) will legitimize a program that leads to reverse discrimination, as the Ontario program surely will.

In this vein, it should be noted that the CNR plan dealt with low-skill positions, which means that hiring women over men on a quota basis may not have led to reverse discrimination. Therefore, this case cannot be used to support the notion that affirmative action and reverse discrimination can and must go hand in hand.

The second point to notice is that the CNR decision does not necessarily support the premise of Bill 79, which is that the underrepresentation of a minority group proves in itself that the group's members have experienced historical discrimination. The court noted that the Human Rights Commission based its findings of systemic discrimination on the fact of underrepresentation as well as strong evidence of deliberate discrimination. This means that the mere existence of underrepresentation might not be enough to trigger employment equity remedies under the Constitution. In short, based on these points, it cannot be said with certainty that Bill 79 is constitutional.

Finally, I turn to my third point, that employment equity will create intolerance and division in the workplace. While many believe that employment equity will eliminate discrimination in the workplace by increasing tolerance for minority coworkers, I believe the opposite will be true. Once employers and employees know that people will be hired and promoted on the basis of race and gender and ethnicity, a new kind of discrimination will emerge. Employers will doubt the abilities of those they hire and promote, and employees will secretly suspect that a minority employee is unqualified. While minority employees are deemed to be equal by the act, they will be regarded as unequal by others. This will, no doubt, cause resentment on both sides, especially in cases where qualified employees are passed over for promotions in favour of less qualified minority employees. Race and gender will be identified in the minds of others in the workforce as never before, thus perpetuating the discriminatory frame of mind that employment equity is supposed to eliminate.

This points to another serious problem for minority candidates. Every minority person who is hired or promoted under an employment equity plan will be forced to wonder whether her achievement is justified as a reflection of talent and experience, and anyone who does earn a position based on merit will have his achievement stigmatized by those who believe that he or she was hired to meet a quota.

With all these problems, the question is what to do?



If the government really wants to promote equal opportunity, guarantee the recognition of merit, avoid constitutional challenges and promote tolerance and unity, it could do so in the stroke of a pen. It could add the following provision to Bill 79: An employer has the right to hire and promote the most qualified candidate.

By way of postscript and just for the record, in case there is any question about my point of view, I would like to state that I believe in the principle of equal opportunity and I believe that government must guarantee to every citizen the right to be free from discrimination of any kind in the workplace, in our schools and in our neighbourhoods. I hold to the ideal of a free, diverse and democratic society where equal treatment is the rule, not the exception. I'm opposed to Bill 79 as it now stands because I believe it will lead us farther away from that cherished ideal.

**The Chair:** Thank you. Third party, five minutes per caucus. Ms Witmer.

**Mrs Witmer:** Thank you very much for your presentation, Mr Alexander. You have talked about the bill. Certainly some of the concerns that you've raised have been shared by others. There does appear to be a need to transform the bill and to blend together and make it more fair and more workable. Without that happening, I think you've indicated and certainly the fears have been echoed by others, there is this fear of quotas and there is a fear that lower standards will be incorporated.

Have you taken a look at how further this act could be improved upon in order to make it more workable, more fair and more equitable?

**Mr Alexander:** I find I certainly approve of many of the provisions of the act. In fact, in my brief I refer to the work of Neena Gupta, who is—

**Mrs Witmer:** I saw that.

**Mr Alexander:** Yes, and I don't know if she's appeared before the committee, but she has suggested various guidelines for a minimal employment equity review that's consistent with merit. If I just might refer to some of her points, I think they're better than anything I can come up with on the spot.

**Mrs Witmer:** Because I think that's what necessary at this point. It's absolutely critical that the members of this committee look at ways in which the bill can be made more fair and more equitable.

**Mr Alexander:** Just, for instance, I'll raise a couple of her points. Here she suggests that there should be an analysis and revision of job descriptions with a firm to ensure that positions are described accurately and comprehensively and that the skills and qualifications required are not artificially inflated.

I think there is a problem, at least in my own experience in the workplace, with invidious distinctions, unnecessary distinctions. I think you can find this in

probably just about every organization you go to. I think employers should give an account of what their criteria are for every position and be able to justify hiring an individual in relation to those criteria. In so far as the act would require that or could require that, I think that would be a real step forward.

**Mrs Witmer:** Is there anything else that you think would be beneficial?

**Mr Alexander:** I do have some concern about the way in which the Employment Equity Commission and the tribunal may be staffed. I believe there is a perception in some quarters that, in the case of human rights commissions, political considerations tend to dominate the appointment process and people who, as it were, have an axe to grind or a particular political agenda, end up trying to forward that agenda through their participation on the commissions.

I think in the case of employment equity, we need to staff these bodies with people who are independent, who have judicial experience or experience in the law, so that there is hopefully an objective frame of mind and temperament brought to the administration of the act. I think that it could imperil the perception that this is a fair scheme if people are appointed on the basis of the employment equity principle to the commission and to the tribunal rather than on the basis of experience, in particular in dealing with statutes of this kind.

1520

**The Chair:** Mr Mills, to begin with.

**Mr Mills:** I listened to your presentation, Mr Alexander, and I must say that at times I thought for a moment that I was back in the 1800s, you know, with your perception of the way the world works today.

**Mr Carr:** Gord lived in the 1800s too.

**Mr Mills:** Not quite.

I understand that you're a lawyer. Is that right?

**Mr Alexander:** Yes, I am.

**Mr Mills:** You're a lawyer, so you must be very familiar with the report Touchstones for Change that came down from the former Supreme Court Justice Bertha White. Are you familiar with that?

**Mr Alexander:** Wilson.

**Mr Mills:** Wilson. You're familiar with that.

**Mr Alexander:** No, I'm not familiar with that report.

**Mr Mills:** She has some pretty hefty things to say about your profession and particularly white males.

**Mr Alexander:** I'm sure she does.

**Mr Mills:** She said that women and ethnic minorities encounter discrimination at all levels of the profession, starting in law school, where there is a "poisoned environment of pervasive sexual harassment and discrimination." Now, sir, I say to you, that you come here and you lecture me as a member of the government

about what's right and what's wrong about equity. I would suggest to you that your own house is obviously in—

**Mr Callahan:** On a point of order, Mr Chairman: Witnesses appear before this committee voluntarily. They really don't need to be dressed down. We're here to listen to them and perhaps to discuss things with them, but not to put people down.

**Mr Mills:** I'm not putting anybody down. I am stating facts.

**Mr Callahan:** We'll soon find if we do that, we won't have any witnesses that even want to come before us.

**Mr Mills:** You are the worst one to tell somebody—

**Mr Callahan:** I think, Mr Chair, in fairness, you should be protecting the rights of witnesses and not allowing that to happen.

**The Chair:** Mr Mills, just as a matter of—

**Mr Carr:** Settle down.

**Mr Mills:** No, I'm not. I'm just going to say, sir, do you think that you have any sort of relationship between Bill 79 and your own profession, having read the report of the former Supreme Court judge?

**Mr Alexander:** First of all, Mr Mills, I'd prefer to stick to the documents that relate to Bill 79, and I'd like to point out to you that in the consultation paper we don't have any analysis, statistical or otherwise, that supports the preamble to the act, which states that all of these designated groups are suffering from historical discrimination.

I think that we have to examine each of these groups on their own terms, address their specific needs and not homogenize them and call them "designated disadvantaged groups." I'm quite concerned that there has not been enough analysis of each group and the measures that would be needed to promote equal opportunity for each group.

As far as Madam Justice Wilson's report goes, I can't speak to it because I haven't read it. As far as there being a poisonous atmosphere in the legal profession, that's true, but I don't think it has anything to do with discrimination.

I would say, in my own experience in law school both here in Canada and in the United States, I've never seen in six years of attending law school the discrimination that Madam Justice Wilson is speaking about. In the profession itself, that's another matter. I may not have enough experience in the profession to speak to this issue in the way that she can. She's been around longer and practised longer than I have.

**Mr Mills:** My final little question is—yesterday we had the Canadian Bankers Association appear here. They said it makes good business sense to tap all pools of labour market potential, including people who

historically have not been part of the economic mainstream. Demographic studies over the decade have made it clear that the traditionally dominant group of white able-bodied males is shrinking in relative terms. Competition for qualified candidates is increasing and the employer for the future will be the one who develops and manages well a truly diverse workforce. Would you agree with that statement?

**Mr Alexander:** I absolutely agree with that.

**Mr Mills:** Thank you very much.

**The Chair:** Ms Akande, one final question.

**Ms Akande:** Your presentation seems to imply opposition or some kind of difference between meritocracy and employment equity. You state that quite frequently throughout your presentation. Certainly, equal merit was something that was implicit in the legislation, so implicit in fact that it was felt that there was not a need to state it. I want you to hold on to that when I connect that with the fact that you say that there isn't adequate research to demonstrate that these designated groups are not proportionately represented within the workplace.

**Mr Alexander:** That's not my statement.

**Ms Akande:** That's not what you're saying. Then would you clarify, please, what you're saying in terms of there not being adequate research.

**Mr Alexander:** The point that I was making in relation to Mr Mills's comment is that this bill is not accompanied by a comprehensive study of the place of these different groups in the Ontario economy today. I think that we should undertake that kind of study to see what degree of underrepresentation actually does exist.

In this regard, I might note that Statistics Canada will be publishing the results of the most recent census within the next few weeks as it affects visible minorities. They've already published it in relation to women. This will provide us with quite a bit of information, I think, to begin to reflect on what the situation is for different groups.

**Ms Akande:** Rather than your saying what there is or is not, you're saying it should be presented here with this legislation so that in fact people could be informed by it.

**Mr Alexander:** Yes.

**Ms Akande:** One of the points that I want ask you about, if I may—am I off?

**The Chair:** We're running out of time. You're doing fine, but we're running out of time.

**Ms Akande:** We're running out of time so that means go or stop.

**The Chair:** We ran out of time in fact. Mr Curling and then Mr Callahan.

**Mr Curling:** Thank you very much for your presentation. I quite enjoyed the direction Mrs Akande was



going in her questioning. Your entire paper, though, seemed to take the position that the groups who are identified in the bill are unqualified.

**Mr Alexander:** No.

**Mr Curling:** One second. If you take the position further—

**Mr Alexander:** No.

**Mr Curling:** Let me complete, you can't say no when I haven't completed what I'm saying, just like that. You've taken the position further that upon recruiting them, it is to recruit unqualified people, and I was saying, even if the statistics don't bear out that this is so, that they are being discriminated against, upon reaching the area of employment, it will lead to employing unqualified people. Could you explain that to me or correct me if my thoughts are running in the wrong direction.

**Mr Alexander:** First of all, my position is not that all of these groups, because they've been designated as historically disadvantaged by this act, are unqualified. I believe in treating people as individuals, and I think the question of merit has to be decided in each case according to talent and experience and what the job requires. So that's not my position at all.

Furthermore, I don't suggest that if employment equity is implemented in its current form that reverse discrimination will occur in every case. It will happen sometimes, it will happen often, but I'm not suggesting that it will happen every time or that merit won't triumph in certain cases.

**Ms Carter:** So a few designated groups could qualify.

**The Chair:** Please continue. You were addressing Mr Curling's question.

**Mr Alexander:** Yes. I just want to dispel any notion you may have that I think the groups which are designated here are underqualified. I don't make that assumption at all. I'm concerned about how people are treated as individuals.

**Mr Curling:** This is it exactly. Now if you are with me that you are concerned about how people are treated as individuals—and that's what it's all about, denying access because of some of the specific identification that is said here—would you agree that you said that in your profession, although you want to deal specifically with this bill and not your profession, but your profession has a lot to do with it. It's a professional organization that also is seen to somehow deny access to a certain group of people, and they say that we have to start taking a serious look at it now for access to that profession.

For a lawyer and someone who is a statistician who said, "In my experience, I've not faced that," and immediately—many blacks and many disabled have said, "You know, I've worked 30 years and I've never faced discrimination," but that does not say there is no

discrimination. Would you say that there is discrimination?

**Mr Alexander:** Yes, in fact my position would be there's discrimination everywhere. I'm not suggesting that the world is a perfect place, and I think discrimination is a very serious problem no matter where you find yourself in life. I think that the government has a role to play in ensuring that people are not discriminated against. In my postscript, I think I stated that quite clearly.

The question is how you do it. You say you're concerned with the individual. What I'm suggesting here is that considerations of group representation can in many cases under this bill eclipse the consideration of individuals and their merits, and that's my concern. My concern is for the individual to be treated fairly.

**Mr Curling:** It's difficult for me to say this now, I'm out of time. But just as a rounder here, the bill is moving in the right direction to get equity, but it's rather weak.

**Mr Alexander:** No. It's moving in the right direction, but the principle of merit needs to be entrenched in the bill.

**Mr Curling:** I agree with that—

**The Chair:** Unfortunately, we've run out of time. I want to thank you, Mr Alexander, for the presentation you made and for taking part in these discussions.

**Mr Alexander:** Thank you very much.

1530

#### ONTARIO MARCH OF DIMES

**The Chair:** I would like to call upon the Ontario March of Dimes, Mr Bill Hoch. Just before they come, I wanted to complete the thought that I was going to say to Mr Mills earlier. I think it's perfectly legitimate for members to attack the arguments that presenters make. We just have to be careful, at times, in attacking the arguments, that we not attack the person. I just wanted to simply pass that on to the members.

**Mr Mills:** That's the last thing I would like to do, Mr Chair.

**The Chair:** Of course. I understand that. Welcome, Mr Hoch. You have half an hour for your presentation and I hope you will leave plenty of time for discussion at some point in that half-hour. Please begin any time.

**Mr William Hoch:** My name is William Hoch. I'm a board member with the Ontario March of Dimes. Joining me today is Mr Jerry Lucas, who is the program director for our provincial office. We would like to take the opportunity to highlight some of the items that you have in the written brief and deal with some of those issues, and then certainly we would be pleased to try and elaborate perhaps on some of the areas that we don't speak about, but someone else may want to ask questions. I welcome the opportunity to be back in front

of a legislative committee.

The Ontario March of Dimes welcomes this opportunity to participate in the formulation of the Employment Equity Act, Bill 79. The Ontario March of Dimes believes that a policy of employment equity should be embraced by all levels of government. Legislation should be designed to bring to a point of equal competition on the job market those groups of people which have faced discrimination, whether by design or by impact. Employment equity legislation must identify and remove each barrier; it must require employers to treat people the same despite their differences and provide special measures to accommodate these differences or overcome barriers which are current and/or historic.

The Ontario March of Dimes supports the legislative initiative to provide employment equity for the four target groups: aboriginal people, visible minorities, people with disabilities and women. However, there are areas which we believe can be strengthened to better serve these groups and we'd like to take a moment to highlight some of these.

The Ontario March of Dimes has been working since 1951 on behalf of persons with disabilities. Our mission statement is very simple; it reads, "To assist adults with physical disabilities to lead meaningful and dignified lives." We work in over 100 communities in this province. The reality is that one in 10 persons is affected by some type of mobility impairment and in many instances turns to the Ontario March of Dimes and other organizations for assistance, not necessarily related to employment equity but to a variety of issues.

In January 1992, we made 28 recommendations in a presentation to the committee. At that time, all 28 were listed. I'm only going to go through a number of these so that we can shorten those down and deal with the key points.

The first one, I think, is worth noting and that is that the employment equity legislation should have three major components: a requirement that employers implement it; that any program intended to benefit the designated groups should be designed with their input. The most efficient method of accomplishing this would be the establishment of employment equity committees including, but not restricted to, representatives of management, labour and the designated groups.

The third point is a requirement, subject to the above, that employers collect and file annual data on the participation rates, the occupational distribution and income levels of disabled employees in their workforces. We're highlighting the disabled in this case simply because we are representing that particular position today.

We're going to assume that items 2, 3 and 4 in the paper are given as written.

In terms of item 5, we would draw your attention to

the data collection and reporting process and ask that it be standardized. It should also be compatible with other jurisdictions in Canada. The commission should specify the data requirements and standardize the process of collecting and reporting. The commission should make efforts to ensure that data requirements and processes are compatible with those used by other jurisdictions and that the paperwork demands on employers are reasonable, given the need for effective monitoring and evaluation.

Item 6: There really is, or should be, an obligation in order to achieve equity for employers and employees throughout the system and to ensure accurate data collection and reporting. The way we are suggesting this happen is not through an entirely voluntary self-identification system but through one whereby the system would work diligently, carefully, in order to have people understand the necessity of working within a reasoned employment equity system. Identification should be voluntary. In other words, it shouldn't be necessarily by your supervisor, but it should also be through education and knowledge that people come forward and understand that identifying is not necessarily a detriment. In some places today, being identified is a detriment and can be career-limiting and in some cases doesn't even allow you to get into the workforce.

Item 7 we will also take as a given, and item 8. I'm not reading these, because you have the written record and I don't want to take your time on those.

We would like to move, if we could, to item 9. Item 9 really is a position that we feel strongly about, the definition of disability. The definition of disability, from our position, should be the one found in the Ontario Human Rights Code. This should be given preference over other definitions. The definition is stated as follows:

"Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a dog guide or on a wheelchair or other remedial appliance or device,

"a condition of mental retardation or impairment,

"a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

"a mental disorder, or

"an injury or disability for which benefits were claimed or received under the Workers' Compensation Act."

The federal definition really is inadequate. We recommend the more practical implementation of the



above definition because it really spells out what is a disability. It doesn't leave some people to interpret their own situation, either because of pressure at work or because they may not understand their own disability to be included in the survey. This would allow people to have a better and clearer definition of disability.

Item 10: Unions should negotiate employment equity clauses within their contracts which allow for entry and movement in the workplace of persons with disabilities. Any limitations to seniority rights should be left to the collective bargaining process. Employment equity legislation should not include provisions restricting or further protecting seniority rights.

1540

Item 11 needs a little bit of clarification. Employment equity committees could assist in worker participation. We note that they are included in the legislation. We consider this to be a positive step forward and, wherever possible, they should involve all of the partners in the decision-making process within the workplace.

To highlight item 12, we believe that steps have been taken, are being taken, last week and others, in the direction of working on training, things like the Ontario Training and Adjustment Board. Other items related to skills development and so on are ongoing. We think all of these things are particularly important and we would urge the government to continue those and to work with the Employment Equity Commission in ensuring that these become part and parcel of some type of supporting process.

Item 13 we think is particularly important. We have seen somewhat of an erosion in the educational system when the dollars become short. The opportunity for persons who may have individualized needs in the education system begin to see those shrink. Things like identification and placement review committees are becoming less likely to classify people, because it means devoting more resources and other things to people, so they're not necessarily getting the support. We would urge that educational facilities and, in the broader sense, training centres—and I'm not talking about schools but the broader context of training centres—should in all respects be accessible to disabled persons.

Item 14: We would note that universities—it shouldn't be just restricted to universities, but we are implying colleges here—and colleges should undertake creative recruitment policies aimed at attracting students with disabilities into courses and professions in which they are underrepresented.

Item 15: Businesses with 10 to 49 workers should be encouraged to undertake a moral practice to employing designated groups. There could be the tendency to look at a cutoff number and suggest, "We're exempt from legislation," but through education and through processes the commission could set up, we're suggesting

that be undertaken.

Item 18: Incentives that include financial, educational, technical and advisory services, along with public recognition awards provided by the commission, are encouraged. We were encouraged to see the positive approach of the commission that there would indeed be incentives or items that were not punitive which employers could take advantage of. We certainly see that as an advantage for the company, as well as the workers and all of the participants in this partnership.

I'll skip over to item 23. There's a lot of talk about standardization of data in the other items, and collection. I'm not sure we want to get into all the nitty-gritty, but certainly we'll entertain questions if you have some concerns about our position.

Item 23: The obligation on employers to collect data should take effect upon the development of standardized data collection. We've not been able to see regulations relative to this, so we're encouraging regulations that would standardize how people report, what they have to report. We think that was implied in the legislation, but we would like to stress that.

Item 27: We make a differentiation here between the employment equity office and the employment equity hearings section. We're suggesting here that the employment equity office has a definitive role to play. That role would be education, working with business as partners, working with advocacy groups, working with designated groups, working generally in the community to provide support, as opposed to the hearing or tribunal stage, where things can often become controversial. We think that it may be better to separate those somewhat so that the person who is perhaps heading the employment equity office is not heading the tribunal stage, because they may be at odds at times. But I think that may be something that the commission and certainly this committee will have to take a look at.

Item 28 just I think requires slight clarification: an advisory council comprised of designated groups. What is missing there is really that it's not just for designated groups that we're looking for an advisory council. That advisory council should be ongoing and it should be all of the partners that are involved in the process of employment equity. It should be ongoing and it should be developmental so that it's not dealt with five years later and then the holes in the dike are patched as they crack open. It can be an ongoing process where everybody can benefit, and certainly everyone then can see how things are developing.

I'm going to stop at that point, Mr Chair, and entertain questions.

**The Chair:** Very good. Four minutes per caucus. Mr Mills and then Ms Carter first.

**Mr Mills:** I thank you for your presentation. I've long supported your organization. I think it's a fine

organization. I'm glad to see you here this afternoon.

First of all, what I'm going to do is read something and then I'm going to ask you to comment on that. I'm going to read from Hansard, dated July 13, 1993, and it concerns the second reading of Bill 79. The Conservative member for Leeds-Grenville said:

"Currently, the reality in the workforce is that the candidate most suitable or most qualified for the position is going to be selected. What this government is suggesting or indicating or mandating by this legislation is an additional consideration which is paramount in respect to these decisions being made by private sector employers. That paramount consideration will be, is this candidate, is this applicant for the job or for promotion a member of a designated group, one of the designated groups laid down by the government? If not, that employer will in all likelihood be forced to hire a less qualified individual.... A less qualified individual will be the successful candidate because the government is saying that individuals selected for promotion or hiring have to be from this designated group."

I'd like to ask you your opinion of Bill 79. Do you see this as what this member for Leeds-Grenville said, as being that an employer will be forced to hire someone who's unqualified because he's in the category, and I put it to you, perhaps someone disabled even?

**Mr Hoch:** Is it appropriate, Mr Chair, to ask who the member for Leeds-Grenville would be?

**Mr Mills:** Mr Runciman.

**Mr Hoch:** Thank you.

**Mr Mills:** It's parliamentary to call people by their riding.

**Mr Hoch:** I just wanted to try and get in my own mind—

**Mr Mills:** Mr Runciman.

**Mr Hoch:** Thank you. If I understand your reiteration of a question or a statement—

**Mr Mills:** It's a direct quote from Hansard and I'm asking your comments, sir.

**Mr Hoch:** Thank you. It's our position that in every case, the most qualified individual will always be hired. That really is the employer's job. It is their position to make money for their particular organization, or if they're a not-for-profit group, to have the best employee there. If the best employee happens to be from that designated group, so be it. As I read the legislation, as our organization reads the legislation, there's nothing that will compel someone to hire someone of a lesser qualification.

1550

**Mr Mills:** Right. Thank you very much.

**The Chair:** Ms Carter, one question.

**Ms Carter:** I also would like to say that I appreciate the March of Dimes and the work you do.

It has been suggested that the definition of disability might allow a dilution, that employers would tend to hire people who were less rather than more severely disabled. How would you respond to the idea that a more restrictive definition could be used to ensure that those who really need that protection so that they can get employment would have it?

**Mr Hoch:** Can I defer, Mr Chair, to my colleague?

**The Chair:** Absolutely.

**Mr Jerry Lucas:** I think there are a number of reasons we're taking this position. First of all, I think, with consistency with the other designated groups in the legislation, that's not the approach taken in defining women or visible minorities, for example. It's a very simple definition, and the reality in those groups is that those with the most education, the most qualifications, are going to get hired first and you'll still need ways of addressing the needs, for example, of women who have not had, let's say, considerable access to education, who may have other barriers to overcome.

The second reason that we are going with a more simplified definition is consistency. We're dealing with a complex issue in employment equity. First of all, your base data are coming from Statistics Canada, which takes a very straightforward definition of disability. You then have employees or potential employees going for job interviews or working in a workplace who are protected under this definition by the Human Rights Commission. To then create a different definition of disability for employment equity creates a situation potentially where I, let's say, as an employer might not hire someone with a mild disability, based on the fact that I want to comply with employment equity but I'm therefore violating the Human Rights Code. You can get into some real problems.

I think the real issue is that there are additional barriers to severely disabled persons getting employed, and this legislation won't address them by changing the definition. What will address them is dealing with attendant care in the workplace, dealing with assistive devices, dealing with how workplace modifications are made, dealing with education, but the definition by itself is not going to overcome those barriers.

**Mr Callahan:** I think on that last part, just very quickly, it seems to me that if you don't expand it to put them on the same footing as a visible minority or a woman, which are self-evident, you might have someone, particularly if it's self-identification, who might have a learning disability, might have—what do they call it?—an attention deficit, which is probably the most common one. He or she may not think it's important to identify that and thus lose the benefits of the legislation. So I appreciate your larger definition. It doesn't take any more printing by the Queen's Printer and I think it would make sense.



I notice you don't refer to the question which has been a common one from many of the groups that have come before us about the problem that much of the meat of this legislation, as opposed to the mechanics, is in regulation.

The reason I say that is because—I tried to clarify it before and I'm going to do it again, and I think the group should know this—regulations are known as the silent laws of the province of Ontario. They are never debated in the House, and in fact, unlike our federal brethren, who at least have a small process whereby regulations are brought before a public committee and debate can be made on them, in the province of Ontario, once a week in the regulations and private bills section of our legislative committees, we simply receive these regulations that have been made by cabinet. We say yea or nay to them based on a set of rules that are given to us, and those are that they not contravene the charter and I think a couple of other things, but they're nothing significant.

But nobody ever gets any notice of them. They can be changed in the twinkling of an eye by the cabinet, the government of the day. The way they become effective is that they have to be printed in the Ontario Gazette. I have to tell you, the Ontario Gazette, even though it's got a sexy name, I don't think there are too many people who have a subscription to that document, nor do I think too many people read it.

So in essence what it means is that if the government of the day—and I don't want to ascribe any improper motives to this government or any other government—decided that we can't afford this or there's a backlash to it or the polls tell them that this is not popular or whatever, for whatever reason they decide they want to change it, they can change this act significantly by just a flip of the switch and no one will ever know. I mean, they'll know eventually, but it'll take a long time for it to filter down.

You haven't addressed it, yet many of the groups that have come before us have, and I think it's absolutely critical to the whole thing, because otherwise it becomes a great centrepiece and a great sort of thing to do for those people who need this type of legislation, but in fact it's smoke and mirrors and any government of any day can change it by the flip of a switch.

Did you intend to comment on that?

**Mr Hoch:** I alluded to it through item 23. I think in responding to that, I would suggest to you that in how we have written many of our comments in the brief, many of which I didn't speak into the record here today but would become part of the record, we are, we hope, clear enough to help this committee and to help those who are writing the regulations establish things like standards so that standards—which we are assuming would become a regulation then—would be clear, would be consistent and so on. That's part of it.

So the hearing process is extremely important. The noting, in terms of the detail that we have throughout this also, while it doesn't mention regulation, we believe speaks directly to how the regulations must be written.

The third item of course is that we believe that the public wants a partnership in an ongoing monitoring. Perhaps monitoring is not necessarily a good word, but an involvement. So that advisory committee that would carry on and work with the government of the day, regardless of who they are, would have the opportunity then to bring forward positive and appropriate change which would affect everyone.

**Mrs Witmer:** Thank you very much for your presentation. You talked here about voluntary self-identification. I think there was some acknowledgement that there could be some problems with the self-identification process. However, you didn't want to see the identification taken over as a responsibility for the supervisor or the manager.

There was a suggestion made by one of the previous presentations this afternoon that an employer be allowed to resurvey his or her workforce if the first survey did not produce the data that were going to be necessary, I guess, to make employment equity work. Do you see any problem with that?

**Mr Hoch:** I'm just going to very quickly answer the first part, and then if I could defer to my colleague.

At the federal level we've seen instances where this has been abused, where the definition was so loose that, without pointing to a particular sector, one particular sector did a survey and people with glasses were considered to have a disability. I think if those things are clearly spelt out and carefully dealt with, those issues initially can reduce the likelihood of having to resurvey. At this point, I'm going to defer.

1600

**Mr Lucas:** I just wanted to maybe tighten up how this section was presented, because we use the word "voluntary." I think one of the issues that does concern us is that first of all we see all employer-employee relationships as one of mutual obligations, and in employment equity or human rights, the concept of reasonable accommodation is an example of that, where there are obligations on both sides to get the job done, but to accommodate.

Employment equity is very much a data-driven system and it relies, as its base data, on census data which is collected in a—it's an enumeration of all Canadians, and really we see this as an enumeration of all employees in the same form. Filling out the census is a mandatory responsibility because of the importance of the data, and I think we are leading in the direction of the commission seeing this with the same amount of onus, that the employee see this as critical data for this

process to work. So it's to the benefit of everyone, for the employees, the employers, the commission and the general public, to believe in the data if this is going to have any weight.

**Mrs Witmer:** I'm not sure now—are you suggesting that the surveying, that it should be mandatory to fill out the form?

**Mr Lucas:** I think it's something this commission should seriously consider. Just like with the census, I think it's very critical that information be confidential and that access to that information be extremely limited. At the same time, the implications, especially if you get into penalties, of the use of the data is so great that the obligation of the employee has got to be stressed.

**Mrs Witmer:** That's interesting. Thank you for your definitions.

**The Chair:** I'm sorry, we ran out of time. I want to thank you both for taking the time to participate in these committee hearings.

#### ONTARIO ASSOCIATION FOR COMMUNITY LIVING

**The Chair:** I would call upon the Ontario Association for Community Living. Mr Kyle, you've seen how the whole committee operates. You can begin as soon as you're ready.

**Mr Gordon Kyle:** I am, if I can figure out how the mike—oh, it just goes on. Okay.

**The Chair:** It comes on.

**Mr Kyle:** Yes, everything's easy.

I apologize that I wasn't able to get my brief together beforehand to send to the committee, and I don't have copies with me other than my working copy, but I've got the address to send copies tomorrow, so I'll make sure they get to you.

I'd like to thank you for the opportunity to come and present for our association. The Ontario Association for Community Living, which I'll refer to as OACL because it's short and it will speed up things considerably, has a membership of 15,000 people from across the province, and we are made up of 116 affiliated local associations which, you may know from your own communities, are often referred to as associations for community living, whatever town they're in, and by a number of other names. Our local associations have been set up to provide a variety of supports and services for people with developmental handicaps. That's our main interest in being here today: to bring some of the issues forward as they pertain to people with developmental handicaps.

OACL is a member of the Disabled People for Employment Equity coalition, which made a presentation to this committee on the 17th, and I just wanted to lend our support to the presentation that it tabled. We developed a lot of our positions around employment equity, over the year, through consultation with other members of that coalition, and you'll see some similar-

ities today as I'll be reiterating some of the positions they brought forward and trying to put them in the context of our concerns.

It's the goal of the Ontario Association for Community Living that all people live in a state of dignity and share in elements of the community and have opportunities to participate effectively. To this end, we're extremely interested in ensuring that people with developmental handicaps have every opportunity to obtain employment.

The employment record to date, for people with developmental handicaps in Ontario, is not good. For the most part, people have been segregated in sheltered workshops which pay little or no wages. Over the past few years, there have been specialized services developed which have supported a number of individuals with developmental handicaps to achieve gainful employment, so we've had some movement. Still, there are barriers which continue to exist which hinder access to employment for many people.

The most significant barriers that we find are related often to attitudes of society and just the failure of employers, for a number of reasons, to accommodate the needs of individuals with disabilities within their workplaces. While the vast majority of people, including employers, acknowledge the rights of people with disabilities to participate in employment, little has been done over the years to ensure that this occurs. OACL believes that effective employment equity legislation is the key to providing increased access to employment by requiring employers to plan for and provide accommodations that are required.

I want to make just a couple of general comments on Bill 79 and then I'll get into some of our issues.

The employment equity principles contained in Bill 79, in section 2, we feel are adequate and provide a good framework from which to build effective employment equity legislation. This brief that we're presenting here is going to take the view of identifying components within the bill itself that we feel support those principles and others which we think would detract from the principles.

You'll see, as we go through, that we have quite a number of concerns where we think that the structure of the bill is not going to result in the recognition of the principles that have been identified. We also do have a concern that the bill is not complete in that there has been a lot left in regulations that we feel should be in the bill, and we touch on a number of those.

I'd like to start with some comments on the bill around issues related to persons with severe disabilities. People who have been labelled as having a developmental handicap are often the most disadvantaged members of society in regard to access to employment. Much of this is related to attitudes which tend often to



categorize disabilities. While we've had some advance, in the last few years, of people with lesser disabilities, some physical disabilities, getting some acceptance in society, persons with a developmental handicap are often seen as incapable of participating actively in society.

Given these attitudes and the extreme isolation that many people with developmental handicaps have experienced over the years, due to institutionalization and so on—excuse me, I've lost my place here.

**The Chair:** That's okay. So do we sometimes.

**Mr Callahan:** We lose our way.

**Mr Carr:** Someone said that about the NDP government.

**Mr Kyle:** I've found it. Okay, we're fine.

So given these attitudes and the isolation that people have experienced, we do acknowledge that often the range of accommodations that are required for people with developmental handicaps and other severe disabilities can be significant to get people under way in society. This, we believe, must be seen, however, not as a reason to exclude people, but we must accept it as a challenge and, on principle, find ways to support people.

OACL doesn't expect that we're going to have the perfect piece of legislation the first time out. We're already going into this anxiously awaiting the review of Bill 79 at the five-year period so that we can build on what's in the bill and try to improve what's in there now and what's going in this time around. We must, however, attempt to make this bill as effective as possible for people with severe disabilities.

1610

In Bill 79, subsection 5(1), it is stated: "It is not a breach of this act to...deny employment to someone if the...denial is one that is permitted under the Human Rights Code by...section 17 (handicap)," to paraphrase. Unfortunately, there are many people with disabilities, especially those, but not limited to those, with the most severe disabilities who will be denied employment. These are people who will be denied employment although their primary concern in life is to get a job and to avoid poverty that is imposed on them by our society.

In order for Bill 79 to cover all persons with disabilities as a designated group, it is essential that subsection 5(1) be amended to put an obligation on employers to hire persons with severe disabilities and persons with disabilities with severe disadvantages, if the supports and employment services that are required by the employer and the individual needing the support are available in the community. The need for special provisions for persons with severe disabilities should also be acknowledged in the preamble or principle section of Bill 79.

OACL is pleased to see that the government plans to

establish a commission and tribunal as vehicles for ensuring successful implementation of employment equity. Many questions still exist, however, regarding the relationship between Bill 79 and the Human Rights Code. While Bill 79 provides mechanisms for addressing systemic employment problems, it does not hold much promise as a means for dealing with individual complaints.

While the Human Rights Commission has not always been an effective avenue for dealing with individual employment complaints, it is an important mechanism for protecting the rights of people with disabilities. It is our hope that Bill 79 will address many of the systemic issues that have led to human rights complaints in the past and will thereby ease the pressure on the Human Rights Commission and allow it to deal more effectively with the complaints it does receive. However, the relationship between Bill 79 and the Human Rights Code must be clarified to ensure that they are mutually supportive and do not detract from protections that currently exist for people with disabilities.

Subsection 11(1) outlines the requirements of an employment equity plan, and I'd like to talk about that for a moment.

OACL agrees that the components listed in the bill are appropriate but worries that, given the level of detail provided, employers will not understand and effectively carry out the required planning process. While the draft regulations for Bill 79 provide some additional detail on the planning process, OACL believes that the bill itself should be enhanced to provide clear guidelines for planning.

Beyond the establishment of the bill, the Employment Equity Commission must give priority to resources for education of employers on mechanisms for the planning and implementation of employment equity. Experience tells us that even when an employer has a sincere desire to hire and accommodate an individual with a disability, he or she often has no idea how to go about doing so. This is particularly true in regard to the identification of the removal of barriers. Employers must be provided with explicit information on how to review policies and practices and to remove barriers within their workplace.

OACL has participated in much discussion over the years on an appropriate definition for "disability" for purposes of employment equity, and I would assume that every disability group that has come before you has probably addressed the issue. The current plan is to use the definition that's contained in the federal Employment Equity Act, and while we recognize that the federal act has failed people with disabilities in many ways, we don't necessarily relate these failures to the definition used in the act. Problems with the federal definition relate more to the government's failure to insist that employers adhere to the definition.

OACL supports the use of the federal definition, as

we feel it's workable and provides continuity with the federal act. We, however, want to see much stricter enforcement of the definition than has been seen in the federal act, and to this end we believe that the definition of disability should be contained in the bill and not left to regulations.

We are concerned with the impact that Bill 79 could have on the responsibility of employers to accommodate the needs of a person with a disability. Currently, under the Human Rights Code an employer must accommodate a person with severe disabilities unless to do so would cause undue hardship, as interpreted in the "Guidelines for Accommodation."

According to Bill 79, accommodations are addressed within the employment equity plan which the employer must produce. Since the bill only requires that an employer "shall make all reasonable efforts to implement...an employment equity plan," we are concerned that this weakens the requirement to accommodate people.

Employment equity may effectively deal with the identification and removal of systemic barriers. It does not, however, provide adequate protection to individuals. The requirement of an employer to accommodate an employee with a disability should be maintained under the Human Rights Code "Guidelines for Accommodation." And we want to say, since we have an opportunity here, for the record, we'd like to see those accommodation guidelines entrenched in some legislation rather than just being left as guidelines as they always have been.

I'd like to take just a moment to look at the issue of mandatory numerical goals and timetables. We believe that the heart of effective employment equity strategy is the requirement for establishing mandatory goals and timetables for hiring people from a target population. Employment equity is an attempt to ensure that the workforce of any particular employer represents the community in which the employer operates.

This is one of the weakest components of Bill 79, which proposes to leave the establishment of targets to employers. Employers cannot be expected to generate information for the establishment of appropriate targets. OACL believes that the Employment Equity Commission must generate the data and establish the numerical goals for each target group within each community. These targets can then be used by employers to establish their employment equity plans.

I'm going to skip because—how's my time doing?

**The Chair:** You have a few minutes left.

**Mr Kyle:** Okay, I'll go through it all. I was going to jump a point or two, but I'll go through them.

I'd like to also look at access to workforce data. We've had some experience with the federal Employment Equity Act, which requires annual recording of

data, which is then made available to the public. We believe that it's only when the public has access to information that third parties can intervene in the process to raise complaints and scrutinize the progress employers are making. It should also be stated in Bill 79 how and how often workforce surveys must be done and what form to use.

I would like to also point out that 1% of the population becomes disabled on a yearly basis, with approximately the same amount dropping off each year due to death rates and persons with temporary disabilities returning to the workforce. There is a danger that if a full workforce survey is only done once every nine years as proposed in the draft regulation, the workforce data can be seriously distorted over time, making it look like you have a lot more people in your workforce than you may in fact have.

The makeup of the commission and the tribunal: Designated group members should make up the majority of the commission and tribunals and their staff. Representation should be equal for all four designated groups. The same should be said of the advisory councils to advise the commission set up by the Ministry of Citizenship. Although these councils will have representation from employers and labour and designated groups, they should still be made up of a majority of designated group members with equal representation from the four designated groups. We feel this will just help us in the process of implementation of all of this.

Regarding the coverage of the bill, we believe the legislation should be focused to cover smaller employers as well. Most of the growth in the future as we see it is going to be with small employers. Many large employers have also reduced their operations into small profit centres as they started to become more efficient, and we think this is important as we move into the future. We recognize that there's an issue of administration and so forth that may be a consideration as we get this under way, but we'd really hate to lose the opportunity of having access and having those smaller employers opened up to us under employment equity.

Finally, I'd just like to take a moment to look at the review of the act. Section 52 of Bill 79 calls for a review of the legislation and the regulation by a standing or select committee of the Legislature after five years. As we stated earlier, we really feel that the initial bill is going to require some significant modification over time, because even we ourselves have struggled with issues of severe disability. I don't think we have all the answers as to how we can put together a fair system, so we need a process of review that we can build on our experience over time. We think the review of the act and the regulations should be done not just once after five years but repeatedly, and we're proposing every three years, after that.

Of the advisory councils referred to in section 45, one



should be specifically established to do a continuous review of the act and regulations and to make presentations to a standing or select committee, to the Employment Equity Commission and the minister who is responsible for the legislation.

Thank you very much.

**The Chair:** Okay, thank you very much. There are three minutes and a half per member. Mr Callahan.

**Mr Callahan:** I'd like to go back to a theme that's come through with a lot of people who have appeared before us, and you've mentioned it: the question of how the guts of this act, the real meat of this act, is all done by regulation. You talk about a review of the regulations. Nobody reviews those.

**Mr Kyle:** Sorry. If I said that, I meant the legislation, the five-year review of the legislation.

**Mr Callahan:** It would be nice if we could review the regulations because in an instant, snap, the twinkle of an eye, the cabinet of the government of the day could literally wipe out or certainly change dramatically the whole framework of the regulations. So in fact what you'd have left would be a tribunal that had been set up, which is merely the mechanism part of it, with nothing to do. That may sound ludicrous, but let me tell you, if this government is really, seriously legitimate about bringing this in, in fairness to those people who are affected, then why in heaven would they not be prepared to put it into the substantive—put it into the area where it can be debated in the House, get it passed and then not let any government change it again without it again being debated by the elected members of this Legislature?

1620

In fact, I think the members on this committee, once they understand—they probably do understand that regulations are the silent laws of Ontario. They never see the light of day. They are done in a cabinet room by the cabinet members, and that's it. They can change them up or down, whatever they like, and not one member of this Legislature or one member of this committee has any say over what happens in that regard. In fact, you might not even know it until after it was done.

So to my way of thinking, in this bill, the mechanism part is all that's before the public, is all that's cast in stone. The rest of it is all up for grabs. I don't want to sound machiavellian or suspect, but this is considered to be a very controversial piece of legislation. It's kind of like a trial balloon and you find out whether or not there's going to be a backlash. That may very well be why the government put so much in the regulation section of the act: so that they could change it according to polls or according to the feedback they got.

I think the people who are advocating this act should press the government to come clean and put more of it

into the body of the act, take it before the Legislature, let it be debated, not let it be done by the guys on the second floor. And let me tell you, I think people should understand that we live in an oligarchy, not a democracy, of whatever political stripe is in office. You've got the Premier, four cabinet ministers and about six unelected people down on the second floor who from time to time come up with the policies that will govern the people of Ontario, and more often than not it's based on: "What are the polls? What do the polls tell us?" I think that's particularly significant here, when you recognize that this government promised all sorts of things and suddenly pulled the string on them.

**Mr Mills:** We promised this.

**Mr Callahan:** Well, you promised it, but you're not giving it, Gord. What you're doing is you're giving smoke and mirrors, because you're putting it all into regulations. I think it's important that the public understands just how regulations can be changed in the twinkling of an eye without anybody ever knowing. Unless you read the Ontario Gazette, which is a widely read magazine—I mean, everybody's got a subscription to it—you'll never know that it was changed.

**Mr Kyle:** May I make a quick comment? We're in a quandary in the disability community as well, though, because when the regulations were released, we had so many concerns. The regulations, I have more concerns about than this, because the bill itself in many ways is fairly—

**Mr Murphy:** An empty shell.

**Mr Kyle:** Yes. I agree with your concern. Our difficulty in coming to this presentation is that without doing a deep analysis of the regulations before we do this, we have difficulty just saying, "Put this in the bill." There are many parts of the regulation I would hate to see entrenched in legislation, because then they can't be changed. So we're really caught between a rock and a hard place. I understand your concern, but on the other hand, if they're left in regulations we can still fight that battle as we go on. It's a strategic issue for us.

**The Chair:** Thank you. Ms Witmer.

**Mrs Witmer:** Thank you very much for your presentation. Certainly you've made us aware of some of the unique concerns that the members of your association have regarding the legislation, and I think you've made a good point regarding the bill vis-à-vis the regulations. There are some benefits to having the information contained in either place.

You talked about the small employers. I'm sorry that we don't have a copy of your presentation, and I look forward to reading it further. What size are you proposing? Were you considering all employers be included within the bill?

**Mr Kyle:** The bill refers to the broader public as to 10—

**Mrs Witmer:** Yes, it does.

**Mr Kyle:** —and I think something like that is a reasonable number. I think we need a statement of principle within this province that all employers work under a principle of employment equity, but as far as legislating, I think something closer to 10, something you can manage and do some administration on, would be better.

We're finding with the small employer, particularly working out of small communities as our local associations typically do—our best success has been in smaller places, because for people with developmental handicaps, often their success comes through the relationships they can build in their workplace. That's where we're finding our greatest success. We would like some mechanism by which we can get into those places and build on what we've got now.

**Mrs Witmer:** So your suggestion would be 10 and more as a reasonable figure.

**Mr Kyle:** I didn't specify in the brief but I would suggest something in that general—

**Mrs Witmer:** I appreciate that, because there have been some who have suggested if you have only one or two employees, you should be covered within the legislation.

**Mr Kyle:** It's a discussion that we've had with other disability groups over time, including the employment equity coalition, and we've gone from at times saying that we need to support the higher number just so that we can administrate and make sure that we can have a way of dealing—but I think at this point we're just looking at the growth of small industry in Ontario, that we can't leave them out of this legislation.

**Mrs Witmer:** And it's true: Many of the people in my own community who would be members of your association are certainly involved in the smaller workplace setting.

What about the definition? You've presented us with a bit of a problem, because the group before you felt that the definition—

**Mr Kyle:** Yes. I was here for their presentation.

**Mrs Witmer:** —should be other than the federal definition, so I guess now we have to determine.

**Mr Kyle:** I think we've had such difficulty—we're not necessarily married to the federal, although we see it as a workable one and also think that for employers who may fall under the federal already, it does provide them an easier continuity for dealing with identification of their workers.

We have a concern about the use of the human rights, though, as was recommended earlier. I really believe that the human rights definition and employment equity definition are trying to do almost opposite things in that human rights is trying to make sure that people don't

suffer as a result of any issue, physical or mental, that may afflict them, no matter how minor, that that shouldn't be a consideration for people.

Employment equity, on the other hand—I wear glasses; I have a number of things. I have a toenail that's a real mess, you know, a few things that are very, very minor and I don't think are any hindrance to my holding employment, and I don't feel disadvantaged because of those at all. We think that we need a definition that is narrower so that we can begin to target those people who really are excluded because of their disability. I think the human rights is good for what it does for human rights, but it's too broad for employment equity.

**Mr Winninger:** Thank you for your presentation. You've suggested that there be some kind of mandatory standards, perhaps a checklist of standards that need to be measured against progress in the workplace.

We've heard a lot from employers both large and small about the need for flexibility, and particularly I recall the grocers' association. They indicated that they knew their workforce better than the government could know their workforce, so they would oppose mandatory guidelines for employment equity.

You seem to go in the opposite direction to that, and I am just wondering what mechanisms you would suggest that would make a mandatory minimal list workable.

**Mr Kyle:** My comment was directed primarily at the issues of identification of barriers and the provision of accommodations and so forth. I don't see it as sort of a big stick on employers. I think we need to find some mechanism, though, by which employers have every tool at their disposal to make sure that they don't miss things that may be barriers. It's very difficult for people who haven't spent time with people with disabilities or who don't have a disability often to see what a barrier is in their workplace. For instance, for a person with a wheelchair to try just to get to the head of your table, he may have a great deal of difficulty in sort of just manoeuvring his chair. That's a minor one. I think an employer would see that.

But we often just don't understand it. I have talked to a lot of employers who just say, "We never have people apply for jobs at our workplace," but if you go through and look at just how they post their jobs and go through it, you can point out to them that, "You have so many barriers you created by just the way you go about doing your business." I'm thinking more to give some real assistance to employers so that—it's like getting a checklist on your car to make sure that your car is operating and they have these 900-point checklists of things that the garage has to check for you to tell you that your car is operational.

1630

**Mr Winninger:** I see.



**Mr Kyle:** I don't see it as a big stick. I see it as a way of just easing the operation, the job employers have to do, and making sure that they've done it.

**Mr Winner:** I believe there may be another question.

**The Chair:** Forty seconds left.

**Mr Mills:** Forty seconds and I'll be very succinct, Mr Chairman. Thank you, sir, for coming here. I'm going to go back to the second reading of Bill 79 on July 13 this year. I go to the statement made by the Conservative member for Leeds-Grenville, Mr Runciman. He said, "Again, I want to say it is a mandatory system of officially sanctioned discrimination, which certainly the Conservative Party cannot support."

Do you see Bill 79 as officially, government-sanctioned discrimination? We're trying to make this work.

**Mr Kyle:** No, I think it's a partnership of employers playing their role in providing access within the communities they operate to all the citizens who work there to have access to their employment. Employers benefit from a lot of things society provides them in the way of roads and infrastructure and so forth to operate their business, and I think they have a responsibility to take a look at their whole community. If that requires some accommodation on their part, then I think that's fair. I don't think that's an unreasonable—

**Mr Mills:** You fully support Bill 79, I think.

**Mr Kyle:** Well, what it's attempting to do. As I've said, there are some things that need to be fixed.

**Mr Mills:** You think it's not perfect, but it's better than nothing, right?

**The Chair:** Thank you. Mr Kyle, thank you very much.

**Mr Kyle:** Did it not get on record? I'm not sure.

**Mr Mills:** He rests his case.

**The Chair:** We thank you for your participation in this committee, Mr Kyle.

**Mr Kyle:** Thank you very much.

STUTTERING ASSOCIATION OF TORONTO

**The Chair:** We'd call upon Mr Pill. Is it Mr Pill?

**Mr Jaan Pill:** Yes.

**The Chair:** The Stuttering Association of Toronto. Welcome to this committee. You have half an hour for your presentation, and I hope you would leave some time for questions and answers at the end.

**Mr Pill:** Yes, I'll take about 10 minutes or so to make my basic presentation. I appreciate the opportunity to speak with you today. I'm speaking on behalf of people who stutter.

I work as a special education teacher in the Toronto area. I also do volunteer work on behalf of people who stutter. I have stuttered severely most of my life, but thanks to treatment I have achieved a measure of

control over my stuttering.

I'm founder of the Stuttering Association of Toronto, a self-help group for people who stutter, and I'm cofounder of the Canadian Association for People Who Stutter, a national network of self-help groups which recently had its second national conference. This conference, which was in Ottawa, brought together 120 delegates from as far as away as New Zealand and Australia and featured simultaneous bilingual translation. This event was made possible through assistance from the Office for Disability Issues of the Ontario Ministry of Citizenship and from the departments of the Secretary of State and other funding sources. I am also chair of the support groups committee of the International Fluency Association, a worldwide network of speech professionals, researchers and self-help groups.

I've defined what stuttering is in the handouts, which I'm sure you've all had a chance to look at. The exact cause of stuttering is unknown, but there appears to be a neurological basis; a genetic element appears to be involved. Between 0.5% and 1% of the adult population stutters. The 1% figure means that there are about 100,000 adults in Ontario who stutter, and for Canada as a whole, there are about 270,000 adults who stutter.

Also, about 5% of children stutter between the ages of 3 and 6. Research has established that children are not to blame if a child begins to stutter. Many children outgrow the problem, and some don't. Traditionally, medical doctors have told concerned parents that the child will grow out of it.

I would mention in that context that I appeared before the standing committee on social development on August 8, 1991, in connection with the Regulated Health Professions Act, 1991. The act originally said that only physicians and not speech-language pathologists should have the right to diagnose whether a child has a stuttering problem, but in the final version that was changed, which I think is a very good thing.

I would also add that the final version of Bill 43 still specified that a number of male-dominated professions can use the title of "doctor" if they're speaking of members of their profession who have PhDs, but that female-dominated professions, including speech-language pathologists, could not use the term "doctor" for members who have PhDs. In the spirit of employment equity, we would hope that the Ontario government will in future have another look at the Regulated Health Professions Act in regard to the use of the title "doctor" by health services professionals who have PhDs.

In terms of the proposed Employment Equity Act, our first recommendation deals with the fact that stuttering is a disability which, if it is effectively treated during childhood, in many cases can be prevented from emerging as a disabling condition later in life. When we look at Bill 79, inevitably discussion moves to the role of federal and provincial human rights commissions and to

the role of federal employment equity legislation that's already in place.

In my written brief I've made the comment that it might be useful if the Ministry of Education and Training and the Ministry of Health looked at a pilot project that's now in place in Peel region. At the moment, many school boards in Ontario offer speech therapy services to children who stutter, but it's been our experience that most of these programs are not very effective. The pilot project which I have described in the written submission involves application of speech therapy by speech-language pathologists who specialize in stuttering. They also have a pilot project to have an early program in place for identification of children who stutter at a very early age. It's possible that more widespread application of such programs in Ontario might lead to the reduction in the percentage of adults who stutter and thus reduce the number of Ontario adults who would need employment equity assistance in the future.

I would add that our second point is that employers can assist employees who stutter to get specialized treatment for stuttering and we applaud employers who are already assisting in this way. I would add that in some cases treatment may involve going to clinics outside of Ontario. Treatment for adults can't cure stuttering but it can ensure that a person can communicate effectively in the workplace.

I would also add the third point, that about 20% of adults who stutter are not able to get lasting long-term gains from even the most effective treatment currently available, and the reasons appear to have to do with neurological functioning. I would say that persons in this category have valuable skills and abilities.

I believe that they, too, deserve a chance to apply for positions and promotions based on the merit principle. In this context of the merit principle I would cite the example of Alan Turing, a British mathematician who happened to be a person who stuttered severely. I would add that we don't remember Alan Turing as a person who stuttered. Instead we remember him as a person who played a key role in developing the mathematical principles that came to form the basis for today's computer technology. I would use that example to suggest that persons who stutter severely can offer skills and abilities that can be of tremendous benefit to our society.

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Our fourth point is that we support efforts to educate and influence employees about stuttering. It's possible that these efforts might be legislated. At the same time, they can be informal.

Our fifth point is that we support the concept of a level playing field which, as we understand it, is indeed based on the principle of merit. It may be useful if the legislation is amended so that the merit principle can be

spelled out clearly and without ambiguity.

The final point is that it may be useful to consider if you take some of the details which are in the regulations and move those details into the legislation itself. If you decide not to, it may be helpful to explain why.

I look forward to your questions and I thank you.

**The Chair:** Thank you. Six minutes per caucus. We'll begin with Mr Carr.

**Mr Carr:** Thank you very much for a very fine presentation. I appreciate the opportunity to go through this with you.

One of the questions is the last one with regard to the regulation. You say it isn't clear why so much detail's left to the regulation. Do you have any thoughts as to why the government would embark on that?

**Mr Pill:** I just want to check which party you represent first of all.

**Mr Carr:** Which?

**Mr Pill:** I would like to check first and find out which party you represent.

**Mr Mills:** They're on the right.

**Mr Carr:** Oh, the party. I'm sorry, I thought you said the party; I said number 6. I'm with the Conservatives.

**Mr Pill:** Okay. Well—

**Ms Harrington:** But they won't support this.

**Mr Pill:** Well, in terms of where you're coming from politically, I would say as a person who stutters that what I'm interested in is simply the most effective legislation. I think, just in terms of the elegance of a piece of legislation, most of the time the most important elements in the legislation are actually in the legislation. It's too easy to change regulations.

So, I'm not sure what the reasons are, but certainly I do have a concern just in terms of procedures. I don't understand why there's so much detail in the regulations.

**Mr Carr:** What other changes would you like to see for your group? Is there anything else that you'd like to see changed in the legislation?

**Mr Pill:** At this point I think I would prefer to wait five years. At this point it's not clear to us whether the legislation is in fact acceptable to a broad range of groups in Ontario or whether it needs to be tightened. At this point I really have no comment. I haven't had enough time to really consult with all of our members on this.

**Mr Carr:** When you look at your best guess of where we'll be a few years from now, if the bill passes, do you see a dramatic improvement—let's talk just specifically for your association and group. Do you see a big improvement three years down the road?

**Mr Pill:** I see a measure of improvement in the



sense that, as a result of the legislation, people who stutter will have a chance to inform the public more about stuttering. It also means that employers will be better informed and will be involved in making life easier for people who stutter.

Also, it might mean that instead of having to go the route of the Human Rights Commission, which only applies to individual cases, it might be possible to put our agenda to a wider forum to the benefit of everyone. I don't see this as an exclusive kind of thing and certainly I support the Conservative Party's attitude about the merit principle. The only question I have is exactly what do you mean by the merit principle?

**Mr Carr:** One last question if I have time: One of the concerns when you set up any commission is what happens. The Human Rights Commission was passed, I guess, going way back under the Conservative government when it started. Great in theory—now we're backlogged so many that I've had so many people who are so fed up with it. They said it's worse having a Human Rights Commission because of the backlog, and it doesn't matter what government. It got backlogged under all three political parties.

Is there some concern with setting up a commission that will become backlogged and really not serve the people? Do you have any concern that what we do, with all good intentions, ends up creating a bureaucracy that—I think all three political parties would say the Human Rights Commission, for example, doesn't work right now. Do you have any concerns about that?

**Mr Pill:** I would say that the Human Rights Commission has a technical problem. I don't think the basic principles on which it's based are defective.

**Mr Carr:** But you agree it isn't working, I think.

**Mr Pill:** I agree there are problems, but I don't think the fact that we have a bureaucracy and we have problems at the bureaucratic level—that therefore it follows that we shouldn't have a Human Rights Commission in place at all. If you're suggesting that what we should do is get rid of it, then I want to express my strong disagreement with what you're saying.

**Mr Carr:** No, I didn't suggest that. I just wanted to see if you feel like I feel. I get comments every day because I deal with it and, quite frankly, the people are so fed up with it. It isn't a case of dollars, because this government has come in and the backlogs got worse under this government. It doesn't relate to any political party. There just is some concern that we put these things in place. I can tell you with all good intentions, the Ontario Human Rights Commission is not working as we sit here today. I agree with you, the intention is great, but it is not achieving results. What everybody wants in here, and I guess I am more results-oriented than I am activity-driven, so I just wanted to see if—

**Mr Pill:** I certainly agree with you that results are

extremely important. One part of my presentation dealt with the fact that, at the moment, speech-language pathologists in Ontario are, in some cases, getting paid and we don't see any results. We certainly don't support waste of taxpayers' money.

**Mr Fletcher:** Thank you for your presentation. I'm going to hit on the merit principle that you are talking about in your brief, that Bill 79 creates a level playing field and therefore qualifications are what are going to determine whether or not a person is hired or promoted. Then you go on to say that it encompasses merit, as you see it. Can you tell me what merit means to you, just so I can get your definition?

**Mr Pill:** I would give one example. In the federal civil service, if you have a person who stutters and they want to apply for an interview, they have a chance during the hiring process to identify themselves as a person who stutters and they would have the opportunity to take a civil service test to indicate that they have some ability. If it happens that they are able to get a sufficiently high mark on the test, it means they have the right to go to an interview and the interview is set up in such a way that the person who stutters—everyone else knows that this person stutters and the fact that they stutter is not going to be held against them in the course of the interview. That's an example of the merit principle.

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**Mr Fletcher:** Right. Just to touch on what Mr Carr was saying, because the Ontario Human Rights Commission is overloaded with complaints, with people who are seeking justice, does that mean we forget employment equity and just fix the Human Rights Commission?

**Mr Pill:** No. I think the Human Rights Commission is concerned with individual cases. Individual cases are extremely important. My understanding is that they don't involve class action kinds of things, and some people don't believe there's such a thing as systemic discrimination. But again, I think we're talking about language and we're also talking about the fact that, in many ways, all of us are in agreement. What we have problems with is terminology.

**Mr Fletcher:** Yes, you're right. Thank you.

**Mr Winniger:** When I was reading your brief last night, at one point you indicate that a large number of stutterers are reticent sometimes even to speak and they remain somewhat silent for fear perhaps or concern, about disclosing the fact of their stuttering. I'm wondering how this would impact on the whole mechanism for self-identification that's built into the act and just what can be done so that people will self-identify and give us an accurate number.

**Mr Pill:** That's an excellent question and it's a concern that we certainly feel ourselves. I think part of

the work that we're doing as people who stutter is encouraging people who stutter to take their disability out of the closet and to enable them to feel that this is in fact a disability. It's not their fault. It's not a psychological disorder. It's not an emotional disorder. It appears to have a constitutional basis. As we have more public information, we would hope that more people will step forward, but in the end it's up to each individual.

**Mr Winninger:** Thank you. I'm not sure if there's time or not.

**The Chair:** If it's a short one, Mr Winninger, yes.

**Mr Winninger:** I was just going to follow up on that by coming back to some comments expressed by employers, particularly, who appear before the committee indicating their fear that people wouldn't self-identify and they would be unable, without some kind of perhaps mandatory requirement, to enumerate the number of disabled people, for example, in their workforce. I just wondered how you felt about any kind of authority vested in the employer, if you will, to validate a disability list.

**Mr Pill:** At this point I really can't offer a comment, except to say that if a person who stutters behaves in such a way that he or she never speaks except under conditions where no one will realize that they stutter, then I think the employer will have as much difficulty as anyone else in determining that the person stutters.

Often we say that 1% of the population stutters, but it's not always easy to see that many people stuttering because one of the most important aspects of stuttering, of this condition, is the fact that a person deals with it by not speaking as much and, as a result, they are almost automatically shut off from the mainstream of life. It's a serious problem that we're dealing with and I thank you for bringing my attention to that potential problem.

**Mr Callahan:** Tell me when there's one minute left, because my colleague would like it.

First of all, I have to say I give you great credit for coming before us to make your presentation. I'm sure it's very difficult. But would stuttering come within the framework of being covered either under the Human Rights Code or under the disabled section of this bill?

**Mr Pill:** At the moment there are two human rights cases that I know of before the commission so, in terms of the Human Rights Commission, certainly it's considered to be a disability. In terms of the federal civil service, if a person identifies himself or herself as having a disability, then certainly stuttering would be considered to be a bona fide disability under the legislation connected with the federal civil service.

In fact, part of our whole agenda is to clearly define that we are dealing with a disability. It's not some minor problem that a person has or some kind of

laughable affliction. The kind of impact it can have on a person's every aspect of life can be tremendous, to the point that some people commit suicide just because of the kinds of problems they encounter.

**Mr Callahan:** In a sense it's like learning-disabled people who have an attention deficit and sort of are captured within the framework of their thinking and so on. Would you and people who have a similar affliction feel more comfortable, and I certainly hope my colleagues in the government who have the ability to bring this about, if the definition of "disabled" were to be one something like that suggested by I think it was the March of Dimes proponent rather than being as limiting as it is?

It's nice to have court cases and determine you're covered, but I always figure it's better to cover you definitively. I guess until right now I hadn't really thought out and I don't think anyone here had really thought of how stuttering can in fact take away one of the major human characteristics, being able to communicate.

**Mr Pill:** Yes.

**Mr Callahan:** Would you feel more comfortable if that were to be included as a specific within the definition of "disability"?

**Mr Pill:** I think that some steps, certainly in the American jurisdiction, are being taken. For example, in the school systems in the States, if a person has some difficulty in completing an examination in sufficient time, then that's taken into account. In fact there's legislation in Ontario which takes into account the fact that some students have difficulties in learning.

I would also say that there appears to be some evidence that learning disabilities often have a neurological basis and also can be helped through very specialized training. So I think certainly that's an area which warrants investigation, and it's taken a long time for people with learning disabilities, dyslexia for example, to be recognized as having a real problem.

Also, we have a lot of examples in the literature and in the media of people who have been able to overcome their problems as a result of adjustments in the workplace on the part of employers or more often on the part of employees, who have found ingenious ways, often electronic ways, to deal with the fact, for example, that they can't read but they can tape-record things and so on.

**Mr Callahan:** I have to give my minute to my colleague, but I wish you the best and I would hope that the members of the government would take that to the minister and that it be specifically included.

**Mr Pill:** Thank you.

**Mr Murphy:** Thank you very much for the presentation. I appreciate it. I was interested to hear you mention the two human rights cases proceeding at this point,



because one of the aspects of the bill that has come forward as a concern, especially to various disability groups, is the different level of accommodation required in the two separate acts.

**Mr Pill:** In the two separate acts. Which two?

**Mr Murphy:** The Human Rights Code and then in this bill. Under the Human Rights Code it's the undue hardship test, and then in this it's a reasonable efforts test. If you look through the latter part of this bill, it says if you go to the Human Rights Commission and it relates to an employment equity plan, you can be bounced to the Employment Equity Commission. Then if they determine that it's not really a plan issue, they can bounce you back to the Human Rights Commission, especially in the disabled context. I was wondering if you had looked at that and had concerns both about that bouncing back and forth and about the different definitions of what is the required accommodation.

**Mr Pill:** I think obviously it would be useful to have consistency, and also I think it's a matter of negotiation whether we're dealing with undue hardship or reasonable efforts. So I would say that certainly it's important to have consistency, and we don't want duplication. I think the issues you raise on that point are valid ones.

**Mr Murphy:** Just one quick follow-up if I may. Do you know if the two cases proceeding are essentially around the issue of accommodation?

**Mr Pill:** In one case, it's a case of alleged wrongful dismissal, where a person claims that in the process of being dismissed he was told that he's a person who

stutters and "We don't want people who stutter around here." In the other case, it's the mother of a school child who had serious concerns about the fact that a particular school board in Ontario did not address in a helpful way the fact that her son stutters.

**Mr Murphy:** Thank you for the opportunity, and I want to echo my colleague's remarks that I do think you've raised some issues that I hadn't appreciated before. Thank you very much.

**Mr Pill:** I appreciate the chance to share some of these with you.

**The Chair:** We thank you, Mr Pill, for coming and sharing in fact your ideas and your own personal history.

**Mr Pill:** Thank you very much.

**Mr Fletcher:** On a point of order, Mr Chairman: What my colleague and friend across the floor said about being bounced back and forth between the Human Rights and the EE commission is not true. They do not get bounced back and forth; one of the departments does deal with it. If it's not Human Rights, then EE will deal with it. It does not get bounced back and forth.

**The Chair:** Thank you, Mr Fletcher, for the point.

**Mr Murphy:** A point of order.

**The Chair:** It's not a point of order. If it's a point of order on that point of order, that would be ruled out in a similar way. This committee is adjourned until Monday morning at 10 o'clock.

The committee adjourned at 1701.





*Continued from overleaf*

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Callahan, Robert V. (Brampton South/-Sud L) for Mr Chiarelli

Carr, Gary (Oakville South/-Sud PC) for Mr Tilson

Carter, Jenny (Peterborough ND) for Mr Malkowski

Fletcher, Derek (Guelph ND) for Mr Duignan

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

**Also taking part / Autres participants et participantes:**

Bromm, Scott, policy adviser, Ministry of Citizenship

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

**Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service

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